June 30, 2022

From:
Nadire Atas (Plaintiff)

To:
United States District Court
Southern District of New York
LAURA TAYLOR SWAIN, Chief United States District Judge

Case Number : 22-CV-00853-LTS

1. I am the Pro Se Plaintiff in Case Number : 22-CV-00853-LTS and a Canadian national residing in Ontario, Canada

2. On Wednesday June 22, 2022, in the evening, I received Order of Dismissal , Denial of Plaintiff's application for counsel without prejudice and Leave to Replead within thirty days , dated May 31, 2022 in Case Number : 22-CV-00853-LTS

3. I respectfully ask for an extension of time of thirty days to replead and file . I require an extension of time to replead as I received the Order of Dismissal in the evening of June 22, 2022, and I cannot replead by June 30, 2022.

4. I have called New York Legal Assistance Group's Legal Clinic for Pro Se Litigants in the Southern District of New York (NYLAG). I have received a response and I have completed and sent the forms available at this link: https://tinyurl.com/NYLAG-ProSe-OI . I received a phone call today and spoke with a representative . I expect to obtain assistance in repleading.

5. If the Court grants me the extension, I will file another Application for the Court to Request Pro Bono Counsel.

6. I ask that the Plaintiffs mailing address be changed to 411- 11 Thorncliffe Park Dr Toronto, ON Canada M4H 1P3 to avoid any future delays in my receiving mail from the Court

7. I also consent to receiving future correspondence from the Court by email to nadireatas24@gmail.com to avoid any future delays

A. Plaintiff will dispense with non diverse defendants to bring complaint into the jurisdiction of the District Court

8. I will replead to come into compliance with subject matter jurisdiction in the New York District Court and Rule 8 of the Federal Rules of Civil Procedure

9. I will dispense with non diverse defendants to bring it into the jurisdiction of the District Court

B. The NYT articles and podcast are based on Judgment in Defamation from a foreign Jurisdiction (Ontario Superior Court of Justice in Canada).

10. My complaint is a libel and defamation action against the New York Times and editors, reporters and editors of the article A Vast Web of Vengeance and Ẁoman Accused of Defaming Dozens Online Is Arrested , The Daily, a podcast produced by the Times and its host .

11. My complaint is a libel and defamation action of an article published in the New York Times about me on January 31, 2021 based on a Judgment in Defamation from a foreign Jurisdiction (Ontario Superior Court of Justice in Canada).

12. The NYT article quotes from and has a link to the Judgment in Defamation from a foreign Jurisdiction of Justice D.L. Corbett at https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf

13. The NYT article is based on interviews with people who are the Plaintiffs , Lawyers and others to the Judgment in Defamation from a foreign Jurisdiction . The NYT article makes multiple references to documents and affidavits filed in Court , this being the Court in Ontario Canada. The same people interviewed in the NYT article are the Affiants to the Judgment in Defamation from a foreign Jurisdiction of Justice D.L. Corbett that forms https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf

14. This engages 28 U.S. Code § 4102 Recognition of foreign defamation judgments . (" the U.S SPEECH ACT") that states that US courts may only recognize a foreign judgment if certain safeguards are met . The the 2010 SPEECH Act makes foreign libel judgements unenforceable and unrecognizable by U.S. courts , both state and federal, if they don't comply with U.S. protections for freedom of speech and due process, including consistency with the U.S. Constitution and section 230 of the Communications Act of 1934 (47 U.S.C. § 230), are satisfied.

15. This also engages 28 U.S. Code § 1331 - Federal question and the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

16. I believe that the defense of absolute privilege or even qualified privilege under New York Consolidated Laws, Civil Rights Law - CVR § 74 is **NOT** available to the defendants New York Times, the reporters and editors and The Daily and hosts as the NYT article and Podcast is based on a Judgment in Defamation from a foreign Jurisdiction of Justice D.L. Corbett that is linked to and forms the NYT article at https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf

17. In the leading case, *Trout Point Lodge v. Doug K. Handshoe,* the U.S. Court of Appeals for the Fifth Circuit , the Federal Court blocked enforcement of the Canadian Defamation Judgment

C. Justice Corbett supplementary Order dated August 5, 2021

18. The NYT has written and repeated on The Daily podcast that I am the author of tens of thousands of internet postings dating back a decade and throughout 2020 and 2021.

19. Following the release of the Judgment in Defamation from a foreign Jurisdiction of Justice D.L. Corbett dated January 28, 2021 at https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf the Plaintiffs to the Judgment in Defamationthe brought a motion to Justice Corbett seeking a Supplementary Judgment to expand the Judgment to include pre-November 2019 postings and postings made between November 2019 and January 28 2021.

20. Justice Corbett released an Order dated August 5 2021 where Justice Corbett makes no finding of authorship internet postings dated pre-November 2019 postings and postings made between November 2019 and January 28 2021

I have included as EXHIBIT 4 the email from Gary Caplan (lawyer and interviewee in the NYT article) to Justice Corbett dated August 6, 2021 , Justice Corbett case Order dated August 5, 2021 and Motion Record

D. Denial of due process in Judgment in Defamation from a foreign Jurisdiction of Justice D.L. Corbett

21. I did not respond in the Canadian Courts to the Canadian Defamation Judgment that forms the NYT article at

https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf as the same Plaintiffs to the Canadian Defamation Judgment had also commenced concurrent motions for contempt in the same Ontario Courts against me seeking incarceration on the same evidence and affidavits .

22. In Canada, motions for contempt are quasi criminal and engage Section 7 of the *Canadian Charter of Rights and Freedoms.* I could not properly respond to the Motions for Defamation Judgment that ended up in the NYT article without subjecting myself to testimony on the allegations in support of the Contempt Motion. My right not to testify on the contempt motions would have been violated if I were to respond to the Motions for Defamation Judgment on the same and identical evidence .

23. I have included EXHIBIT 3 , the Endorsement of Justice Pollak in Contempt motions in the same defamation actions dated November 20, 2020. Paragraph 2 (29) speaks to the affidavit evidence filed in connection with the four Motions for Summary and default Judgment before Justice Corbett and the contempt motions before Justice Pollak is the same and the ongoing issue over disclosure and self incrimination in quasi criminal contempt motions.

E. Justice D.L. Corbett Judgment under s. 140 of the *Courts of Justice Act*

24. I will provide a brief summary of Justice Corbett's formal Judgment under s. 140 of the *Courts of Justice Act* (vexatious litigant) dated January 3, 2018 to put into context Justice Corbett's judicial decisions including his decision in the Canadian Defamation Judgment that is in the NYT article at https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf

25. Justice Corbett released his Reasons for Judgment for the Application under s. 140 of the CJA (vexatious litigant) dated January 3, 2018 and the Reasons for Judgment is

reporting publicly on Canlii and other subscription judicial reporting sites such as Carswell

26. In Canada, Judges are expected to speak through their Reasons for Judgment and thereafter never explain their judgments. Once a Judgment is delivered, it is " given over " to critical scrutiny by colleagues on the Bench, the bar, the academic community , the public, the media and by the higher courts .

27. Justice Corbett, following the release of his Reasons for Judgment under s. 140 of the CJA (vexatious litigant), signed a formal Judgment that includes terms and provisions in Paragraphs 2-6 and 35 that were **NOT** in his Reasons for Judgment

28. Paragraphs 2-6 and 35 of his formal Judgment read together order Justice Corbett to be Judge, Jury, Executioner and Appellate Judge of ALL OF HIS OWN ORDERS IN THE ACTIONS INVOLVING ME.

29. Paragraph 35 of his formal Judgment orders that the “case management judge” for the purposes of this judgment is currently D.L. Corbett J. When Justice Corbett is replaced as case management Judge or is not available, then the powers of the case management Judge under this judgment shall be performed by the Toronto Regional Senior Judge or his/her designate and will be Judge, Jury, Executioner and Appellate Judge of ALL OF HIS/HER OWN ORDERS IN THE ACTIONS INVOLVING ME .

30. Paragraphs 2 and 3 of the formal Judgment prohibits me from instituting or continuing any further action, application, proceeding, motion, assessment or appeal of any kind, until such time I have obtained leave pursuant to section 140(3) of the Courts of Justice Act. and as provided for in this formal Judgment.

31. Paragraph 4 of the formal Judgment orders that in the event that the case management Judge (Justice Corbett) allows for and grants any Application under section 140(3) of the Courts of Justice Act, any action, application, proceeding, motion, assessment or

appeal of any kind, any such action shall be subject to case management by the case management Judge and this being Justice Corbett and if Justice Corbett is replaced, then the Regional Senior Judge or his/her designate

32. Paragraph 6 of the formal Judgment requires me to seek permission from Justice Corbett on an ex-parte motion for leave to commence any Application under section 140(3) of the CJA.

33. If Justice Corbett grants leave to me to commence any Application under section 140(3) of the CJA, Paragraph 6 (a) (b) excludes the Attorney General to be heard by the Court under its statutory entitlement under s. 140(4) (d) of the CJA

34. Paragraphs 2-6 and 35 are not founded in s.140 of the Courts of Justice Act and are not in Justice Corbett publicly reporting Reasons for Judgment

35. Paragraph 8 of the formal Judgment precludes me from commencing Court proceedings in any court outside Ontario unless I simultaneously provide a copy of the Reasons for Judgment and this Judgment to the court. That is why I provided a copy of the Judgment of Justice D.L. Corbett with my complaint to the NYSD Court.

36. Justice D.L. Corbett has applied all the terms in his formal Judgment to proceedings launched against me and where I am the defendant . For clarity, I am required to seek permission in the defense and answer to proceedings launched against me in Ontario , Canada , including in the Judgment for Defamation that forms the NYT article at https://int.nyt.com/data/documenttools/caplan-v-atas/36240cac847e8e4e/full.pdf

Paragraph of Judgment	**Terms of formal Judgment of Justice Corbett under section 140 of the Courts of Justice Act (see the entire formal Judgment at EXHIBIT 1)**

1	**THIS COURT DECLARES** that the Respondents have persistently and without reasonable grounds instituted vexatious proceedings and conducted proceedings in a vexatious manner in the Courts of Ontario within the meaning of sections 140(1)(a) and (b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended."
2	**THIS COURT ORDERS** that the Respondents are hereby prohibited, either directly or indirectly, from instituting any further action, application, proceeding, motion, assessment or appeal of any kind, save for an appeal from an Order granted in response to this application, on their own behalf or on the behalf of anyone else in any Court in Ontario until such time as they have obtained leave pursuant to section 140(3) of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended, and as provided for in this Judgment.
3	**THIS COURT ORDERS** that the Respondents are hereby prohibited, either directly or indirectly, from continuing any action, application, proceeding, motion, assessment or appeal of any kind previously instituted in any Court in Ontario, on their own behalf or on the behalf of anyone else in any Court in Ontario until such time as they have obtained leave pursuant to section 140(3) of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended, and as provided for in this Judgment.
4	**THIS COURT ORDERS** that in the event that the Court makes an exemption to any Order requested herein permitting the Respondents to continue any action, application, proceeding, motion, assessment or appeal of any kind, any such action, application, proceeding, motion, assessment or appeal shall be subject to case management by the case management Judge
5	**THIS COURT ORDERS** that a copy of this Judgment and the Reasons for Decision be forthwith delivered to the Ontario Court of Appeal and to the Divisional Court."
6	**THIS COURT ORDERS** that the Respondents are prohibited from commencing any Application under section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for leave to proceed with a proceeding or step in a proceeding in any Court in Ontario until such time as they have obtained an order from the case management judge giving them permission to bring an application under section 140(3) of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended, for leave to proceed with a proceeding or step in a proceeding which order shall be obtained through a motion in writing and on a without notice basis. The steps for such a motion by the Respondents shall proceed as follows: (a) The motion shall be accompanied by (a) an affidavit, not exceeding ten pages in length (double-spaced), that outlines the merits of the proposed proceeding or step; (b) explains the extent (if any) to which the Respondents have satisfied the outstanding costs awards against them; and (c) a copy of the Reasons for Judgment and this Judgment.

	(b) If the court is of the view that the proposed application for leave to proceed has a sufficient degree of merit, the court will direct that a full application for leave to date for the hearing of that application shall be set thereafter.“
7	**THIS COURT ORD**ERS that a copy of this Judgment, including the Reasons for Judgment, be sent to every Region of the Ontario Superior Court of Justice with a direction that no application by the Respondents under section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for leave to proceed with a proceeding or step in a proceeding is to be filed or listed for hearing unless it is accompanied by an order as set out in the above paragraph."
8	**THIS COURT ORDE**RS that neither of the Respondents shall commence or continue (a) Court proceedings in the Federal Court of Canada or in any court outside Ontario, o (b) administrative proceedings of any kind (including, without limitation, complaints to any professional or regulatory body or claims to a human rights commission or tribunal) unless the Respondents simultaneously provide a copy of the Reasons for Judgment and this Judgment to the court, body, commission or tribunal to which the claim or complaint is made.
9	**THIS COURT ORD**ERS that the Respondents shall not seek to commence any criminal proceedings or make complaint to any peace officer without simultaneously (or, in exigent circumstances, as soon as is reasonably practicable) providing the judicial officer (whether a justice of the peace or other judicial officer) or the peace officer (as the case may be) with a copy of the Reasons for Judgment and this Judgment.
25	**THIS COURT ORD**ERS that the parties are not to communicate with the Court other than: (a) where expressly authorized to do so by the Court; (b) to request a case management conference or other appointment before the Court; or (c) with the consent of all affected parties
35	**THIS COURT ORDER**S that the “case management judge” for the purposes of this judgment is currently D.L. Corbett J. If Justice Corbett ceases to be the case management judge, then the case management judge shall be the person so appointed by the Toronto Regional Senior

	Justice or his/her designate. If the position of case management judge is vacant, then the powers of the case management judge under this judgment shall be performed by the Toronto Regional Senior Justice or his/her designate.

EXHIBITS	
1	Formal Judgment of Justice Corbett under s. 140 of the Courts of Justice Act (vexatious litigant Judgment)
2	Amended Reasons for Judgment under s. 140 of the Courts of Justice Act (vexatious litigant Judgment) reporting at Peoples Trust Company v. Atas, 2018 ONSC 58 (CanLII) dated January 3, 2018
3	Endorsement of Justice Pollak in Contempt motions dated November 20, 2020. Paragraph 2 (29) speaks to the affidavit evidence filed in connection with the four Motions for Summary and default Judgment before Justice Corbett and the contempt motions before Justice Pollak is the same. Before both courts were and are: (i) the 16 volumes filed in the 2016 Dale & Lessmann Contempt Amended Motion Record; (ii) the five- volume Restated Motion for Contempt in the Caplan Action; and (iii) the affidavits referred to in paragraph 25.)
4	Email of Gary Caplan to Justice Corbett, Case Management Endorsement dated August 5, 2021 and Motion Record

Court File No. CV-14-515899

ONTARIO
SUPERIOR COURT OF JUSTICE

Application under section 140 of the *Courts of Justice Act*,
R.S.O. 1990, c. C.43, as amended

THE HONOURABLE	)	WEDNESDAY, THE 3RD
	)	
MR. JUSTICE D. L. CORBETT	)	DAY OF JANUARY, 2018

B E T W E E N:

PEOPLES TRUST COMPANY, DAVID BROOKER, TARAS KULISH, MOSES MUYAL, MICHAEL HAROLD KIMBERLY, IRENE MARY KIMBERLY, STANCER GOSSIN ROSE, RAYMOND STANCER, MITCHELL HART ROSE, ROSE AND ROSE, BLAIR COLEMAN ROSE, SCOTT KELLY, RAHUL SHASTRI, IRA T. KAGAN, DAVID WINER, DAVID SLOAN, BAKER SCHNEIDER RUGGIERO, PATRICE COTE, RON HATCHER, STEINBERG MORTON FRYMER LLP, MICHAEL JOHN MITCHELL, NICHOLAS CARLOS CANIZARES, DAVID HART, BRESVER SCHEININGER & CHAPMAN LLP, RUI RUIVO, FRANK PA, ATLANTIC (HS) FINANCIAL CORPORATION, TOM PIRES, MEGACORP, KRISHAN CHAHAL and NUTAN CHAHAL

Applicants

and

NADIRE ATAS and 626381 ONTARIO LIMITED

Respondents

JUDGMENT

THIS APPLICATION was heard September 11, 2015, at Toronto and this Honourable Court having declared the Respondents, Nadire Atas *("**Atas**")* and 626381 Ontario Limited, to be vexatious litigants within the meaning of section 140 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, by an endorsement dated February 7, 2017, with reasons to follow,

and the Reasons for Judgment having been released on January 3, 2018, and amended Reasons for Judgment having been released on February 23, 2018 ("**Reasons for Judgment**"), and in the presence of lawyers for the Applicants and in the presence of lawyers for the Respondents for certain appearances, and the Respondents in person for other appearances,

FURTHER, THIS MOTION made by the Respondents was heard on February 7, 2017, for an order recusing the Honourable Justice D. L. Corbett from hearing or dealing with all proceedings that involve the Respondents, with the reasons for that decision being released on January 3, 2018, as part of the aforesaid Reasons for Judgment,

ON READING the Notice of Application issued November 10, 2014, the evidence filed by the parties, and on hearing the submissions of the lawyers for the Applicants and the Respondents for certain issues and the Respondents as self-represented litigants on certain issues,

AND UPON READING the motion materials filed by the parties for the recusal motion heard February 7, 2017, and on hearing the submissions of counsel for and on behalf of the Applicants and upon hearing the submissions of the Respondents, self-represented,

Vexatious Litigant

1. **THIS COURT DECLARES** that the Respondents have persistently and without reasonable grounds instituted vexatious proceedings and conducted proceedings in a vexatious manner in the Courts of Ontario within the meaning of sections 140(1)(a) and (b) of the *Courts of Justice Act,* R.S.O. 1990, c. C.43, as amended.[1]

2. **THIS COURT ORDERS** that the Respondents are hereby prohibited, either directly or indirectly, from instituting any further action, application, proceeding, motion, assessment or

[1] Page 132, para. 357(1) of the Reasons for Judgment.

appeal of any kind, save for an appeal from an Order granted in response to this application, on their own behalf or on the behalf of anyone else in any Court in Ontario until such time as they have obtained leave pursuant to section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and as provided for in this Judgment.[2]

3. **THIS COURT ORDERS** that the Respondents are hereby prohibited, either directly or indirectly, from continuing any action, application, proceeding, motion, assessment or appeal of any kind previously instituted in any Court in Ontario, on their own behalf or on the behalf of anyone else in any Court in Ontario until such time as they have obtained leave pursuant to section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and as provided for in this Judgment.[3]

4. **THIS COURT ORDERS** that in the event that the Court makes an exemption to any Order requested herein permitting the Respondents to continue any action, application, proceeding, motion, assessment or appeal of any kind, any such action, application, proceeding, motion, assessment or appeal shall be subject to case management by the case management judge.[4]

5. **THIS COURT ORDERS** that a copy of this Judgment and the Reasons for Decision be forthwith delivered to the Ontario Court of Appeal and to the Divisional Court.[5]

6. **THIS COURT ORDERS** that the Respondents are prohibited from commencing any Application under section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for leave to proceed with a proceeding or step in a proceeding in any Court in Ontario until such

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[2] Page 132, para. 357(1) of the Reasons for Judgment.
[3] Page 132, para. 357(1) of the Reasons for Judgment.
[4] Page 132, para. 357(1) of the Reasons for Judgment.
[5] Page 132, para. 357(1) of the Reasons for Judgment.

time as they have obtained an order from the case management judge giving them permission to bring an application under section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for leave to proceed with a proceeding or step in a proceeding which order shall be obtained through a motion in writing and on a without notice basis. The steps for such a motion by the Respondents shall proceed as follows:

(a) The motion shall be accompanied by (a) an affidavit, not exceeding ten pages in length (double-spaced), that outlines the merits of the proposed proceeding or step; (b) explains the extent (if any) to which the Respondents have satisfied the outstanding costs awards against them; and (c) a copy of the Reasons for Judgment and this Judgment.

(b) If the court is of the view that the proposed application for leave to proceed has a sufficient degree of merit, the court will direct that a full application for leave to proceed be prepared which shall then be served on the responding parties and a date for the hearing of that application shall be set thereafter.[6]

7. **THIS COURT ORDERS** that a copy of this Judgment, including the Reasons for Judgment, be sent to every Region of the Ontario Superior Court of Justice with a direction that no application by the Respondents under section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, for leave to proceed with a proceeding or step in a proceeding is to be filed or listed for hearing unless it is accompanied by an order as set out in the above paragraph.[7]

8. **THIS COURT ORDERS** that neither of the Respondents shall commence or continue (a) Court proceedings in the Federal Court of Canada or in any court outside Ontario; or (b)

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[6] Page 132, para. 357(2) and (3) of the Reasons for Judgment.
[7] Page 132, para. 357(3) of the Reasons for Judgment.

administrative proceedings of any kind (including, without limitation, complaints to any professional or regulatory body or claims to a human rights commission or tribunal) unless the Respondents simultaneously provide a copy of the Reasons for Judgment and this Judgment to the court, body, commission or tribunal to which the claim or complaint is made.[8]

9. **THIS COURT ORDERS** that the Respondents shall not seek to commence any criminal proceedings or make complaint to any peace officer without simultaneously (or, in exigent circumstances, as soon as is reasonably practicable) providing the judicial officer (whether a justice of the peace or other judicial officer) or the peace officer (as the case may be) with a copy of the Reasons for Judgment and this Judgment.[9]

10. **THIS COURT ORDERS** that the Respondents are hereby granted leave to pursue an appeal of this Judgment to the Court of Appeal without the need to apply for leave under section 140(3) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.[10]

Stay of Proceedings

11. **THIS COURT ORDERS** that this Judgment is and shall not be stayed pending any appeal that may be brought, without prejudice to any stay that may be granted by an appellate court of competent jurisdiction.[11]

12. **THIS COURT ORDERS** that all court proceedings in which the Respondents are involved are hereby stayed pending further court order with the exception of the following:

(a) the contempt proceedings in defamation action no. CV-16-544153;[12]

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[8] Page 133, para. 357(4) of the Reasons for Judgment.
[9] Page 133, para. 357(5) of the Reasons for Judgment.
[10] Page 133, para. 357(6) of the Reasons for Judgment.
[11] Page 133, para. 357(7) of the Reasons for Judgment.
[12] Page 122-123, para. 340-341 of the Reasons for Judgment.

(b) any appeal which the Respondents may bring from this Judgment to the Court of Appeal;[13] and

(c) any steps directed to be taken in this Judgment.[14]

Ancillary Orders

13. **THIS COURT DECLARES** that, except where this Court has expressly ordered otherwise in this Judgment, the Judgment does not decide any question between the parties in any of the underlying proceedings.[15]

14. **THIS COURT ORDERS** the corporate Respondent shall not be required to be represented by counsel in any of these proceedings and any previous orders to the contrary are hereby set aside.[16]

15. **THIS COURT ORDERS** that any court fee waivers granted to the Respondents under the *Administration of Justice Act*, R.S.O. 1990, c. A.6, as amended, or otherwise, be and the same are hereby set aside.[17]

16. **THIS COURT ORDERS** that the Respondents shall henceforth pay any applicable court fees for any litigation to which they are a party unless they obtain an order for a fee waiver from the case management judge. The Respondents are ordered not to request or accept fee waivers unless and until the Respondents have obtained an order for a fee waiver from the case management judge.[18]

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[13] Page 123, para. 341 of the Reasons for Judgment.
[14] Page 123, para. 341 of the Reasons for Judgment.
[15] Page 133, para. 357(8) of the Reasons for Judgment.
[16] Page 128, para. 342(17) of the Reasons for Judgment.
[17] Page 133, para. 357(9) of the Reasons for Judgment.
[18] Page 133, para. 357(9) of the Reasons for Judgment.

17. **THIS COURT ORDERS AND DIRECTS** that in the event the Respondents request copies of any documents in the underlying proceedings from the other parties, the Respondents are required to pay for copies of the documents in advance.[19]

18. **THIS COURT ORDERS** that Atas shall advise the Court by March 30, 2018 under oath if there are any transcripts she has ordered during the course of the section 140 application for which she has not paid including the amount owed and any reason(s) for non-payment.[20]

19. **THIS COURT ORDERS AND DIRECTS** that Atas is directed to identify to the Court by March 30, 2018, under oath, any legal proceedings not otherwise listed on Schedule 1 to the Reasons for Judgment in which either Respondent is a party and the status of those proceedings:

(a) of any kind, concluded or otherwise, from June 1, 2004 to the present; and

(b) commenced at any time prior to January 1, 2004 if the proceeding has not been finally disposed of or if Atas intends to seek to re-open, vary or set aside the final disposition.[21]

20. **THIS COURT ORDERS AND DIRECTS** that in respect of those claims for costs by Atas in respect of motions brought by Peoples Trust returnable, January 19, 2012 and March 19, 2012, Atas shall provide her bills of costs, any pertinent offers, and written submissions no longer than ten pages in length, single-spaced, by January 31, 2018. These submissions shall also include her argument as to why she believes that she is entitled to costs of these appearances. The Applicants shall provide their responding submissions by February 28, 2018.[22]

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[19] Page 127, para. 342(15) of the Reasons for Judgment.
[20] Page 129, para. 345 of the Reasons for Judgment.
[21] Page 127, para. 342(13) of the Reasons for Judgment.
[22] Page 134, para. 357(13) of the Reasons for Judgment.

21. **THIS COURT ORDERS AND DIRECTS** that any Applicant seeking payment of outstanding cost orders against Atas, shall provide the following information to the court by January 31, 2018, and Atas shall provide her position on these issues to the court by March 30, 2018:

(a) the proceeding in which the order was made;

(b) the party in whose favour the order was made;

(c) the date of the award;

(d) the quantum of the award;

(e) the applicable rate of interest on the award;

(f) the payment terms on the award; and

(g) any payment(s) made on account of the award.[23]

22. **THIS COURT ORDERS** that any outstanding issues regarding the balance of costs owed as between the Applicant, Peoples Trust Company, and the Respondents will not be addressed until after the assessments of mortgage enforcement costs have been completed.[24]

23. **THIS COURT ORDERS** that this Court shall give further directions regarding the possible consolidation of legal proceedings once it is decided whether and which proceedings will continue upon completion of the steps referred to herein.[25]

24. **THIS COURT ORDERS** that future case management conferences shall be scheduled as follows:

(a) the next case management conference shall be scheduled by the office of the case management judge in February, 2018, to settle the Judgment herein, if required;

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[23] Page 128-129, para. 344 of the Reasons for Judgment.
[24] Page 128, para. 343 of the Reasons for Judgment.
[25] Page 127, para. 342(14) of the Reasons for Judgment.

(b) further case management conferences are to be scheduled by parties through the case management judge's office if any party wishes a case conference before the next conference scheduled by the court; and

(c) a case management conference shall be scheduled by the case management judge's office in April, 2018, after the deadlines for receipt of materials from the parties in accordance with this Judgment.[26]

25. **THIS COURT ORDERS** that the parties are not to communicate with the Court other than:

(a) where expressly authorized to do so by the Court;

(b) to request a case management conference or other appointment before the Court; or

(c) with the consent of all affected parties.[27]

Directions in Underlying Proceedings

26. **THIS COURT ORDERS AND DIRECTS** that the following steps shall be taken in respect to the following proceedings involving the Respondents:

(a) **04-CV-279726 [Gomes and Kelly v. Respondents (Gomes/Kelly Mortgage Action)]**: Atas shall, by March 30, 2018, provide full particulars of all steps the Respondents wish to take in respect to this action. These particulars should explain (a) why the issues they raised now would impact the judgment, (b) why they should be permitted to raise them now, after the judgment has been final since 2005 and has been paid in full, (c) when the issues they wish

[26] Page 130-131, para. 351 of the Reasons for Judgment.
[27] Page 134-135, para. 358 of the Reasons for Judgment.

to raise now first came to their attention, and why they were not raised at the time of this action. There shall be no other steps taken in respect to this proceeding without further order of this Court. This direction applies to the Respondents' (i) request to assess costs; (ii) request to serve a demand for confirmation of authority under R.15.02; (iii) proposed motion to set aside or vary pursuant to R.59.06; and (iv) intention to take any other step of any kind respecting this proceeding.[28]

(b) **08-CV-364585 [Peoples Trust v. Atas (Wycliffe Mortgage Action)]:** The Applicant, Peoples Trust Company, shall deliver a statement showing its claimed balance owing on the Wycliffe Mortgage by January 31, 2018. The Respondent Atas shall deliver her response to this statement by March 30, 2018. Peoples Trust shall not respond or reply to the Atas response; rather, this Court shall provide further directions about settling the outstanding balance after exchange of materials. Peoples Trust has already provided disclosure respecting its mortgage enforcement costs in its affidavit of documents served April 28, 2009, Disclosure Brief for the Assessment served July 21, 2010, and further disclosure of the Disclosure Brief in documents provided to Atas' then solicitor, Dr Hamalengwa, on May 15, 2014. Peoples Trust should provide further disclosure of back-up documents for claimed costs that were not included in this previous disclosure when it provides its statement showing the balance owing. Atas should request any further disclosure she seeks in her response to Peoples Trust's statement of the

[28] Page 123, para. 342(1) of the Reasons for Judgment.

balance owing. There shall be no other steps taken in respect to this proceeding without further order of this Court.[29]

(c) **08-CV-352871 [Peoples Trust v. Respondents (St George Street Mortgage Action)]:** Peoples Trust Company shall by January 31, 2018, deliver its Bill of Costs for the assessment of its mortgagee's costs for enforcement of the mortgage together with any further disclosure of back-up documents for claimed costs not included in the previous disclosure provided to Atas in Peoples Trust's affidavit of documents served November 28, 2008, and the Disclosure Brief for the previous assessment served March 22, 2010. Atas shall deliver any request for further disclosure by March 30, 2018. There shall be no other steps taken in respect of this proceeding without further order of this court.[30]

(d) **98-CV-148544 (Aarko v. Respondents), 98-CV-2438666 (Stable Electric v. Respondents), 99-CV-176687 (Atas v. Susman), 01-204981 (Royal Bank v. Respondents), 02-CV-222834 (Respondents v. Daimin), (02-CV-236212 (Atas v. Pinkofsky Lockyer), 04-CV-272499 (Respondents v. Balitsky), 04-CV-272500 (Respondents v. Greer), 07-CV- 339942 (CIBC v. Atas), 07-CV-346185 (Atas v. Davies McLean Zweig), 08-CV-350523 (Toronto v. Respondents), 10-CV- 400425 (Toronto v. Respondents):** Atas shall advise this Court, under oath, of the status of these proceedings by March 30, 2018, including whether the judgment has been satisfied. Where the proceeding has been disposed of on a final basis (including all appeals), Atas shall provide a

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[29] Page 123-124, para. 342(2) of the Reasons for Judgment.
[30] Page 124, para. 342(3) of the Reasons for Judgment.

copy of the final order and shall certify in an affidavit that she does not intend to take any further step in the proceeding, or, if she does intend to take further steps, what those steps are. If Atas does not have a copy of the final order, she may attest to it by way of affidavit. If any of these proceedings has not been disposed of finally, Atas shall provide a list of the name(s), lawyer(s) and addresses for service of all parties to that litigation.[31]

(e) **11-CV- 429572 (Atas v. Dale & Lessmann LLP), 11-CV-429573 (Atas v. Dale & Lessman LLP), 14-507402 (Atas v. Steinberg), 14-CV-507409 (Atas v. Bresver Grossman Scheininger & Chapman LLP), 14-CV-507414 (Atas v. Sean Gutstadt Lash LLP) and 14-CV-507421 (Respondents v. Bresver Grossman Scheininger & Chapman LLP)**: The above noted actions are dismissed. If any parties to these proceedings claim costs in respect to them, they shall provide bills of costs and written argument of no more than five pages to this Court by January 31, 2018. Atas shall provide any responding submissions by March 30, 2018. There shall be no reply submissions or oral costs submissions in respect to these proceedings unless this Court subsequently orders otherwise.[32]

(f) **11-CV-429140 (Atas v. Steinberg):** The Court shall give further directions about this proceeding at the next case management conference.[33]

(g) **05-CV-302734 (Respondents v. Baker Schneider Ruggiero), 05-CV-302736 (Respondents v. Cote), 05-CV-302742 (Respondents v. Kagan Shastri), 05-CV-302891 (Cote v. Respondents), 06-313064 (Respondents**

[31] Page 124, para. 342(4) of the Reasons for Judgment.
[32] Page 124-125, para. 342(5) of the Reasons for Judgment.
[33] Page 125, para. 342(6) of the Reasons for Judgment.

v. Kagan Shastri), 06-CV-315208 (Respondents v. Brooker), 06-CV-315671 (Respondents Steinberg Morton), 06-SC-39478 (Brooker v. Atas), 07-CV-343745PD1 (Respondents v. Kagan Shastri), 07-SC-50451 (Baker Schneider Ruggiero v. Respondents), 08-CV-349206PD3 (Respondents v. Brooker), 08-CV-354613 (Respondents v. Steinberg Morton), 09-CV-391695 (Respondents v. Kimberley), 10-CV-411421 (Respondents v. Mitchell and Canizares), 10-CV-411424 (Respondents v. Bresver), 10-SC-99076 (Brooker v. Respondents), 11-CV- 429140 (Respondents v. Steinberg), ll-CV-429148 (Atas v. Steinberg), 11-CV- 429176 (Respondents v. Mitchell), 14-CV-504825 (Respondents v. Stancer Gossin Rose):

(i) The above noted actions appear to be disputes over legal fees or claims against lawyers. Any lawyer or law firm that is a party to any of these proceedings, and which claims that it is still owed legal fees by Atas for professional services rendered, shall provide the following information to the Court by January 31, 2018, provided that any lawyer or law firm that has been paid or which does not wish to pursue further any claims for fees need not respond to this direction:

(A) The amounts claimed (including a breakdown of fees, disbursements, other claims, and interest);

(B) The time during which the professional services were rendered;

(C) The proceeding numbers in which these claims have been asserted;

(D) Any Court orders that have been made in respect to these claims (other than this judgment and case management orders made by this Court or by Stinson J.).

(ii) Atas shall provide the following information by March 30, 2018 in respect to the information furnished by the solicitors pursuant to this direction:

(A) Whether she disputes the retainer;

(B) Whether she disputes the quantum claimed for fees, disbursements, other claims, and/or interest;

(C) Whether she has paid anything on account of these claims;

(D) Aside from counterclaims, whether there is any basis on which she disputes her obligations to pay these claims.

(iii) In respect to any claims advanced by Atas against any of the lawyers and law firms, she shall, by March 30, 2018, provide the Court with the following information:

(A) The amount they claim against each lawyer or law firm, in total;

(B) All of the reasons they claim those amounts from each lawyer or law firm;

(C) When and in what proceeding she first asserted the claims she now wishes to pursue against the lawyers.[34]

[34] Page 125-126, para. 342(7) of the Reasons for Judgment.

(h) **07-CV-336072 (Peoples Trust v. Respondents), 07-CV-341210 (Hilson v. Respondents), 07-CV-342059 (Peoples Trust v. Atas), 08-CV-359261 (Hilson v. Respondents):** The above noted actions appear to concern mortgages on the Wycliffe Property or the St George Street Property and appear to have been concluded on a final basis. Atas shall confirm the status of these proceedings, under oath, by March 30, 2018.[35]

(i) **08-CV-346821PD3 (Respondents v. Pires):** Atas shall advise whether she intends to continue with this proceeding by March 30, 2018. No other steps shall be taken in this proceeding pending the next case management meeting and pending further order of this Court.[36]

(j) **10-CV-400035 (Stancer Gossin v. Atas)(the First Defamation Action):** The plaintiffs in this Action shall advise the Court by January 31, 2018, if they wish to continue with this proceeding to trial, and if they do, their proposed schedule for steps to complete the trial. Atas shall provide her position to the Court by March 30, 2018.[37]

(k) **10-CV-411415 (Respondents v. Peoples Trust), 11-CV-429151 (Respondents v. Chahal), 11-CV-429180 (Atas v. Peoples Trust):** The above noted actions appear to arise from the enforcement of the Peoples Trust mortgages. Atas shall advise whether she intends to continue with these proceedings by March 30, 2018. No other steps shall be taken in these proceedings pending further Order of this Court.[38]

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[35] Page 126, para. 342(8) of the Reasons for Judgment.
[36] Page 126, para. 342(9) of the Reasons for Judgment.
[37] Page 126, para. 342(10) of the Reasons for Judgment.
[38] Page 126, para. 342(11) of the Reasons for Judgment.

(l) **12-SC-6446 (Atas v. Sutton), 13-SC-21972 (Atas v. Sutton, 14-CV-498399 (Atas v. Sutton):** The above noted action appears to include unpaid commissions held by Sutton Group following receipt of a notice of garnishment, and claims against Sutton Group for various alleged conduct. Sutton Group shall advise by January 31, 2018 of the quantum (if any) of the amount it holds that it acknowledges is owed to Atas, and whether it objects to paying this amount into Court. Atas shall provide her responding position by March 30, 2018. No other steps shall be taken in these proceedings pending further order of this Court.[39]

Directions re Draft Judgment

27. **THIS COURT ORDERS** that the Applicants shall provide a draft judgment to the Court by January 19, 2018. Atas shall provide her approval to the draft judgment or her comments about the draft Judgment to the Court by February 2, 2018. The parties shall identify any typographical or similar errors in the Judgment that they wish corrected and shall identify any issues in this Application which they believe have not been decided in this Judgment at the same time that they provide the Court with their draft Orders.[40]

28. **THIS COURT ORDERS** that a copy of the Reasons for Judgment and the formal Judgment shall be placed in each file listed in Schedule 1 of the Reasons for Judgment if the proceeding has not already been disposed of finally. The Applicants shall prepare a list of the files they say fit into this category when they provide their draft Judgment. The Respondents

[39] Page 126-127, para. 342(12) of the Reasons for Judgment.
[40] Page 129, para. 346 of the Reasons for Judgment

shall provide their comments on this list at the time that they provide their comments on the draft Judgment.[41]

Cost Submissions

29. **THIS COURT ORDERS** that the Applicants shall provide written costs submissions by January 31, 2018. These shall include bills of costs, any pertinent offers to settle, and written submissions of no longer than fifteen pages. The Respondents shall provide written responding submissions by March 30, 2018. These may include a bill of costs, any pertinent offers to settle, and written submissions of no longer than fifteen pages. There are no restrictions on the number of authorities that may be included by either side. There shall be no reply or oral costs submissions unless this Court directs otherwise.[42]

Extensions of Deadlines

30. **THIS COURT ORDERS** that if any party wishes to extend a deadline, this may be done either by consent order delivered to the attention of the assistant of the Honourable Justice D. L. Corbett or by motion in writing to be served on seven days' notice and filed by delivery to his assistant's attention.[43]

Recusal Motion

31. **THIS COURT ORDERS** that the Respondents' motion to recuse the Honourable Justice D. Corbett is hereby dismissed.[44]

32. **THIS COURT ORDERS** that the Respondents pay costs on the recusal motion heard February 7, 2017, to the Applicant, Peoples Trust Company, fixed at $2,000.00 plus HST.

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[41] Page 134, para. 357(14) of the Reasons for Judgment.
[42] Page 134, para. 357(12) of the Reasons for Judgment.
[43] Page 135, para. 359 of the Reasons for Judgment.
[44] Page 108-109, paras. 280-284 of the Reasons for Judgment.

33. **THIS COURT ORDERS** that the Respondents pay costs on the recusal motion heard February 7, 2017, to the Applicants as represented by Mason Caplan Dizgun Roti LLP fixed at $3,500.00 plus HST.

34. **THIS COURT ORDERS** that in this judgment, "Atas" means either or both of the respondent Nadire Atas and the respondent 626381 Ontario Limited, as the context may indicate.

35. **THIS COURT ORDERS** that the "case management judge" for the purposes of this judgment is currently D.L. Corbett J. If Justice Corbett ceases to be the case management judge, then the case management judge shall be the person so appointed by the Toronto Regional Senior Justice or his/her designate. If the position of case management judge is vacant, then the powers of the case management judge under this judgment shall be performed by the Toronto Regional Senior Justice or his/her designate.

THIS JUDGMENT BEARS INTEREST at the rate of three percent (3%) per year commencing on January 3, 2018.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.

FEB 26 2018

PER / PAR:

Court File No. CV-14-515899

PEOPLES TRUST COMPANY, DAVID BROOKER ET AL
Applicants

-and-

NADIRE ATAS and 626381 ONTARIO LIMITED
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

JUDGMENT
(January 3, 2018)

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Lawyers for the remaining Applicants

CITATION: Peoples Trust Company v. Atas, 2018 ONSC 58
COURT FILE NO.: 14-CV-515899
DATE: 20180103

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
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PEOPLES TRUST COMPANY, DAVID BROOKER, TARAS KULISH, MOSES MUYAL, MICHAEL HAROLD KIMBERLY, STANCER GOSSIN ROSE, BLAIR COLEMAN ROSE, RAYMOND STANCER, MITCHELL HART ROSE, ROSE AND ROSE, BLAIR COLEMAN ROSE, SCOTT KELLY, RON HATCHER, STEINBERG MORTON FRYMER LLP, RAHUL SHASTRI, IRA T. KAGAN, DAVID WINER, DAVID SLOAN, BAKER SCHNEIDER RUGGIERO, PATRICE CÔTÉ, MICHAEL JOHN MITCHELL, NICHOLAS CARLOS CANIZARES, DAVID HART, BRESVER SCHEININGER & CHAPMAN LLP, RUI RUIVO, FRANK PA, ATLANTIC (HS) FINANCIAL CORPORATION, TOM PIRES, MEGACORP, KRISHNAN CHAHAL and NUTAN CHAHAL	)	*Christina Wallis*, for Peoples Trust
	)	
	)	*Gary M. Caplan*, for the Applicants other than Peoples Trust and the Chahals
	)	
	)	*Liz Roberts*, for Krishnan and Nutal Chahal
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Applicants	)	
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- and -	)	
	)	
NADIRE ATAS and 626381 ONTARIO LIMITED	)	*Raj Napal*, for the Respondents[1]
	)	
	)	
Respondents	)	

[1] Mr Napal represented the respondents through much of this application, but left the brief before argument of supplementary issues; Ms Atas spoke for herself and her company after Mr Napal left the brief.

AMENDED JUDGMENT

D.L. Corbett J.:

> *Enough is enough. This Court has limited resources and must, therefore, attempt to deal with the work before it in a fashion that is fair to all users of the court. While a person's access to justice is a fundamental right, the court must be diligent to ensure that its processes are not abused by any particular litigant to the detriment, not only to those directly involved in the litigation, but, as well, to the system at large.*[2]

1. Introduction: An Obviously Vexatious Litigant

[1] Nadire Atas says that she is not a vexatious litigant. She is, by her lights, the victim of fraud, incompetence and thievery at almost every turn. She has yet to have her day in court, in her view, on almost every important issue that has arisen in the roughly four dozen legal proceedings that her conduct has spawned, stretching back to 2005.[3]

[2] The real nature of Ms Atas' conduct is captured in language from a decision respecting very similar behaviour by a vexatious litigant in Québec:

> These actions in the Superior Court are interrelated and share the same pattern: voluminous, inconsistent, incoherent, not to say preposterous allegations; disregard for the Superior Court by instituting but not pursuing Court proceedings against several of the persons impleaded; voluminous exhibits; reiteration of issues covering mostly the same grounds as before; extreme and unsubstantiated allegations; abuse of the process of law and harassing everyone and anyone connected or not, directly or indirectly, with the bankruptcy of the Plaintiffs' business.[4]

[3] Ms Atas' conduct seems to be fixated on the enforcement of mortgages against her two properties, and anybody she believes has been connected with her failure to prevail in her defence of those mortgage enforcement proceedings. Her conduct has been obsessive, unbridled, and consistent with a certain type of vexatious litigant who will not rest until a perceived historic injustice is remedied. In this she is like the vexatious litigant in *Bishop*, of whom the Ontario Court of Appeal wrote:

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[2] *P.R.* v. *K.R.*, 2005 CanLII 44186 (ONSC), per Power J., para. 1, aff'd on this issue 2007 ONCA 516.

[3] Ms Atas' litigation history goes back even earlier, as is reflected in my chart of proceedings involving the respondents, attached as Schedule 1 to this judgment.

[4] *Yorke* v. *Paskell-Meade*, [1996] RJQ 1964 (SCQ). For "bankruptcy of the plaintiffs' business", in the case of Ms Atas, read "loss of her two properties".

> … the motion judge was justified in concluding that the appellant is fixed in his belief that the respondents misappropriated funds from his late mother and that nothing short of a vexatious litigant order will prevent him from continuing his crusade against them in the courts indefinitely.[5]

[4] Ms Atas was (and now may be again) a real estate agent. She is intelligent. She is a very experienced litigant. She agrees that her many proceedings need "streamlining", amendments to the pleadings, and case management. Case management has been in place now for five years and it would be fair to say that, despite the best efforts of two experienced jurists, all that has been accomplished of substance is (a) a finding that Ms Atas is not legally incapable and does not need a litigation guardian; (b) this s.140 application; (c) an interim and interlocutory injunction against Ms Atas to prohibit her from defamatory internet publications; and (d) preliminary steps in a motion to hold Ms Atas in contempt for allegedly breaching the injunction. The litigation that underlies the s.140 application has been stayed throughout this case management process.

[5] What could possibly be so difficult and complex as to spawn so many lawsuits and take so long to sort out? Three routine mortgage transactions. That is all. Conflict over these transactions, enforcement of the mortgages, and fixing and collecting the underlying debts have consumed nearly fourteen years of time, hundreds of thousands of dollars in costs (far more than any reasonable value to the underlying claims, in the aggregate), and there is still no end in sight.

[6] Courts are the place people come to get decisions on conflicts they cannot resolve among themselves. Decisions, once rendered, subject only to appeal rights, put a final end to the dispute. A party may disagree with the result – that is not unusual – but like it or not, the thing has been decided, the matter is at an end, and the parties can move on with their lives. Ms Atas seems unable to accept decisions with which she does not agree. She does not seem to accept that her agreement is not a condition precedent to ending the dispute.

[7] Nadire Atas is a vexatious litigant, and obviously so. The real issue in this proceeding, once the facts are appreciated, is not whether she should be declared vexatious, but what should be done with the many proceedings she has commenced or which have been brought against her, and what can be done to persuade her, once and for all, to cease her vexatious behaviour, put these matters behind her, and move on with her life.

[8] I am convinced that Ms Atas sincerely feels that she has been wronged. In this she herself is wrong. It is she who has wronged others, in a campaign of abuse of process stretching over almost a decade and a half, endless cycles of claims and follow-on litigation, and a studied inability, perhaps emotional incapacity, to see disputes come to an end. The words of Gray J. of a similar vexatious litigant capture the situation:

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[5] *Bishop* v. *Bishop*, 2011 ONCA, para. 7.

> I have little doubt that Ms Cudini feels strongly that she and her family have been badly treated by the Bank, [its] law firm, and the property management company, and she believes that many, if not most, of the court proceedings in which she has been involved have been wrongly decided. However, like any disappointed litigant she must accept an adverse court decision subject only to appeal. She is not entitled to continually engage in litigation seeking to rehash matters that have been decided against her.[6]

[9] Enormous sums have been spent trying to fend off Ms Atas from step after meritless step. Finally, in frustration, some of those most burdened by her vexatious conduct banded together and brought this application to have Ms Atas declared vexatious, which she most certainly is. That process, which has unfolded over more than three years, further illustrates Ms Atas' vexatious conduct. She litigated the vexatious litigant proceedings vexatiously. And then, as these proceedings were drawing to a close, she commenced a campaign of online defamation against the targets of her litigation. Inevitably that spawned a fresh lawsuit, against her, in which she raises, in her own defence, justification as a basis to once again litigate the grievances she believes that she has.

[10] I have tried my best to contain these proceedings within reasonable bounds while still affording Ms Atas an opportunity to defend her position reasonably. In retrospect, I believe I may have erred on the side of tolerating Ms Atas' behaviour, being too indulgent to her vexatious behaviour, thereby putting the applicants to further expense and delay in bringing these matters, finally, to a close. In retrospect, a summary history of Ms Atas' conduct as a litigant paints an overwhelming picture of the quintessential vexatious litigant, who pursues a campaign of remorseless litigation without fear of consequence because she, herself, is judgment-proof.

[11] Many of the people who have been hurt by Ms Atas' conduct are small firm lawyers, many of whom do mortgage enforcement work for institutional lenders. The history of these matters discloses that the mortgage enforcement cases involving Ms Atas and her properties should have been routine. The result has been years of expensive litigation and repeated defamatory accusations that the lawyers are dishonest and incompetent.

[12] Finally, by way of introduction, it is essential that Ms Atas' matters be managed by one judicial officer. Several judges of this court have previously found that Ms Atas has engaged in abuse of process. None have had the entire scope of her activities before them. At one point Ms Atas advised, through her counsel, that she intended to bring a motion before me for an order that some 26 judges "be recused" from hearing her matters. The argument went that, in all the circumstances, a new judge should give matters a "fresh look". The problem with these cases is that they have not had enough common oversight. It is only when confronting the totality of Ms Atas' conduct that it is possible to grasp fully the nature of the problem here.

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[6] *Bank of Montreal* v. *Cudini*, 2013 ONSC 482, per Gray J., para. 110.

2. The Importance of Finality to Litigation

[13] Why do we have civil courts? What is their purpose? To do justice, one would hope. To provide a fair and efficient process, one would try. To apply the law, one would expect. To do all this fairly and impartially, one would insist. But as much as any of these important things, the purpose of the civil justice system is to decide.

[14] Civil courts are the places we go to obtain a final decision for ordinary disputes, of some materiality, that parties cannot solve for themselves. The process of justice can be slow, indeed, grinding. It certainly can be expensive relative to the value of the matters in dispute. The system can be criticized for these failings, and often is, but it is still better than the alternatives: pistols at dawn, no recourse at all, lawlessness, self-help. Any civilized society requires a mechanism for deciding such disputes. And there is no more fundamental feature to such a system than its finality: however long and elaborate the process may be, however many appeals may be available, once the process has run its course, the dispute is at an end. The matter is decided. Whether the parties disagree with results or not, they have become beyond dispute or debate.

[15] The principle of finality requires that parties air their entire grievance and not approach the process piecemeal. In our system, a judgment, once rendered, after all appeals are exhausted, authoritatively disposes of all the issues raised in the proceeding, or which could have been raised in the proceeding.

[16] As for appeals, of course they delay the time at which the parties can say, "This is now decided once and for all". But appeal rights are substantive rights. Interlocutory appeals are rare and discouraged, but it is generally considered that one right of appeal from an original final decision is essential to a fair and complete civil process. Further appeals are generally not of right and are permitted only for reasons greater than the interests of the parties to the case. Generally, a trial decision and one appeal is all the justice that one is entitled to receive in our system.

[17] There are exceptions to these general principles. Sometimes there is an error in a judgment that can be corrected on motion back to the trial judge. This is generally available only where the error is not controversial: where a date has been recorded incorrectly or there has been a typographical inversion of parties' names or an arithmetical error. These motions are not an opportunity to ask the judge to reconsider a decision made on a contested point.

[18] Then there are the rare cases where the court may be persuaded to re-open a matter to consider fresh evidence. The test to re-open a case for fresh evidence is stringent.[7] It must be evidence that was not available at the trial and it must have a decisive effect on the outcome. Parties are expected to investigate the case fully before trial, raise all their issues and lead all

[7] *671122 Canada Inc.* v. *Sagaz Industries Canada Inc.*, [2001] 2 SCR 983; *Mehedi* v. *2057161 Ontario Inc.*, 2015 ONCA 670; *Holterman* v. *Fish*, 2017 ONCA 769.

their evidence in the one trial; trials are not reiterative processes. And orders made on consent are even more difficult to set aside.[8]

[19] Finality is itself a principle of justice, integral to the civil justice system. And Ms Atas' record as a litigant has been inconsistent with this basic principle.

3. Overview and Roadmap

[20] This is an application under s.140 of the *Courts of Justice Act* to declare Ms Atas and her company vexatious litigants.[9]

[21] Ms Atas has prompted more than 40 lawsuits plus several administrative proceedings. These events have unfolded over eleven years prior to this application. The litigation has either been without merit or so disproportionate to the matters truly in issue as to be abuses of process. This conduct has continued in this application itself, where Ms Atas has litigated, or sought to litigate, the issue of her conduct vexatiously. As a result of this conduct, this application required intensive case management, for about a year to bring the application to a hearing on the merits, and then multiple further appearances culminating in February 2017, when this court declared Ms Atas vexatious with these reasons to follow.

[22] Ms Atas seems to have little subjective awareness of how pointless and destructive her conduct has been. She sincerely believes that she has claims that deserve to be adjudicated. This is the heart of the problem: she is unable to exercise reasonable judgment as a litigant, even within the broad bounds within which litigation may be pursued aggressively. For the reasons that follow, I find that she and her company are vexatious litigants.

[23] I regret that these reasons are so long. However, many judicial officers have commented on Ms Atas' behaviour over the past fourteen years (a circumstance that prompted her to seek to bring a motion for an order "recusing" some 26 judges from hearing her matters). Direct quotations, from many sources, carries considerable force, and I have chosen to be comprehensive at the expense of length.

[24] I start with a legal framework for this application. Then follows a brief summary of the primary transactions that underlie much of this vexatious litigation. They are simple, ordinary mortgage transactions. Then, with this framework in mind, I review the background facts and litigation history in detail. Then I deal with the arguments raised by Ms Atas, including (a) her argument that I cannot determine whether her conduct has been vexatious without probing the merits of the various claims, something I cannot do because Ms Atas was not permitted to

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[8] *Yancey* v. *Neis*, 1999 ABCA 272, *Philipos* v. *Canada*, 2016 FCA 79, *Holterman* v. *Fish*, 2017 ONCA 769.

[9] Ms Atas is the sole officer, director and shareholder of the corporate respondent. I generally have not bothered to distinguish between them in these reasons, and when I refer to Ms Atas in these reasons, I include her corporation wherever her corporation is also involved.

adduce a record or cross-examine in respect to issues going to the merits; and (b) her argument that this court should recuse itself (i) because the court is precluded from hearing the application on the merits because it is the case management judge; and (ii) for bias or reasonable apprehension of bias. Then I return to the legal analysis to apply the law to the facts and I conclude this analysis by finding Ms Atas and her company to be vexatious litigants. I then consider the existing litigation and give directions about the next steps to be taken to bring all of these matters to a speedy, fair and just conclusion. I finish with the terms of my order and directions on costs.

[25] There are two final preliminary points of which to take note. All of this litigation has its genesis in the financing arrangements for two properties. One, the St George Street Property, concerned two mortgages advanced in the aggregate amount of $178,000, apparently by three lenders (Messrs. Gomes and Kelly, and Dorothy Hatcher). There is no doubt that this money was advanced. There is no doubt the mortgages went into default and proceedings were brought on those mortgages. Ms Atas challenges whether certain fees and expenses paid from the mortgages were things that she should have been required to pay. The aggregate value of this claim appears to have been something like $21,500, if Ms Atas had been successful on every arguable aspect of her claim. She was not. She lost that claim entirely, on the merits, in a decision of Pitt J. of this court which was upheld by the Court of Appeal.

[26] Ms Atas eventually refinanced the St George Street Property with a mortgage from Peoples Trust Company. A second mortgage on that property was also obtained from Janet Louise Hilson. It appears that the issues around the Hilson mortgage were litigated and resolved. Ms Atas still has claims respecting the Peoples Trust mortgage. They concern disputed mortgage enforcement and legal costs (which were alleged by Peoples Trust to aggregate around $92,000 at the time the property was sold by Ms Atas and the Peoples Trust mortgage was otherwise paid out). Ms Atas also raises issues about attorned rents (said to total $18,500) and the disposition of Ms Atas' personalty removed from the St George Street Property.

[27] The second property, the Wycliffe Property, involved a mortgage obtained from Peoples Trust. All that remains in issue respecting that property is a dispute about the lender's enforcement and legal costs. The value of that disagreement seems to range between $40,000 and $100,000 (subject to further interest accruals).

[28] The sums in issue are not paltry. But neither are they enormous. And it appears that a large portion of them arise (to the extent that they are assessed as owing) as a result of Peoples Trust's extraordinary costs to address Ms Atas' vexatious conduct for the better part of a decade.

[29] That so much litigation should be spawned over such sums is, simply, absurd.

[30] There is a large public interest component to this application. Excessive judicial resources have been, frankly, wasted on this prolonged set of conflicts. This application and its aftermath will bring it all to an end, eventually. And Ms Atas will be precluded from litigating in this way in future: she is a litigant who needs careful and active supervision if circumstances

should arise where she is permitted to litigate in future. This is necessary to protect the public and to protect the justice system.

[31] This judgment is organized as follows (paragraph numbers parentheses):[10]

[10] A copy of this list is set out in Schedule 3 of these reasons, for ease of reference.

4. Legal Principles: Vexatious Litigant Applications

[32] As of the time that this application was commenced, subsection 140(1) of the *Courts of Justice Act* provided:

> Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,
>
> (a) instituted vexatious proceedings in any court; or
>
> (b) conducted a proceeding in any court in a vexatious manner[11], the judge may order that,
>
> (c) no further proceeding be instituted by the person in any court; or
>
> (d) a proceeding previously instituted by the person in any court not be continued,
>
> except by leave of a judge of the Superior Court of Justice.[12]

[33] There are several features of this provision worthy of note from the outset:

(i) An order under s.140 is sought "on application" rather than as an ancillary order within a legal proceeding.[13]

(ii) The vexatious conduct may be based upon commencing vexatious proceedings or by litigating legal proceedings vexatiously. These bases are framed disjunctively: either is sufficient and both may be present and considered.

(iii) The order requires leave from a "judge" either to commence any legal proceeding or to continue with a proceeding "previously instituted by the person". There seem to be two gaps in (d). The provision does not address the problem of vexatious defence of legal proceedings (a feature of some of Ms Atas' litigation, as shall be seen), and it seems to take an "all or nothing" approach to proceedings: leave is required to "commence" or "continue" but there is no requirement to obtain leave for each step in a

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[11] Paragraph (b) was added after the decision of the Court of Appeal in *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, which held that persistent vexatious conduct within one proceeding was not covered by the provision as it then read. Earlier cases therefore have to be treated with caution.
[12] *Courts of Justice Act*, RSO 1990, c. C.43, s.140(1).
[13] *Lukezic* v. *Royal Bank* (2012), 350 DLR (4th) 111 (Ont. CA).

proceeding. I return to these issues when I consider remedies later in this decision.

[34] There is a three-part test under s.140(1):

(i) Has the impugned activity been "persistent"?

(ii) Has the impugned activity been "without reasonable grounds"? and

(iii) Has the impugned conduct been "vexatious"?

[35] During the course of case management, Ms Atas argued that this application is restricted to allegedly vexatious conduct by the respondents against the applicants, and, complementarily, that the scope of any order made against the respondents should not extend to litigation involving the respondents and non-applicants. These arguments are simply wrong. First, Ms Atas' conduct as a litigant is in issue here, and this includes her conduct in litigation, in administrative proceedings, and in related extra-litigation conduct such as harassment, incivility and defamation, all in respect to applicants and non-applicants, so long as it is related to litigation. In this regard, I held in paragraph 4 of my case management order dated April 27, 2015:

> The applicants are not restricted in their materials to Ms Atas' conduct in respect to them. They may rely upon any relevant evidence that may assist them to meet the test in s.140. In response, Ms Atas may rely upon any evidence relevant to whether she is a vexatious litigant, and not just her conduct in proceedings involving the parties who have brought the s.140 application.

[36] Second, the scope of the remedy under s.140 is not limited to proceedings involving the applicants, an argument raised by Ms Atas repeatedly during case management and at the return of the s.140 application.[14] The general remedies under s.140 are broad. While it is open to the court to restrict the scope of the remedy, this is seldom done under s.140. The general and usual order prohibits all litigation without leave of the court. Certainly the usual broad order is required in this case.

[37] The number of legal proceedings involved is not a basis, by itself, for finding a person vexatious. Institutional litigants such as lenders and insurers are frequently before the courts because of the nature of their businesses. As noted by the Court of Appeal nearly forty years ago:

> The phenomenon of a multiplicity of legal proceedings does not of itself justify the making of an order under the *Act*. The legal proceedings must be vexatious

[14] I address this argument in greater detail in the section of these reasons dealing with remedies.

> and they must have been instituted "habitually and persistently and without any reasonable ground."[15]

[38] Care needs to be taken in reading older decisions under s.140 of the *Act* and predecessor legislation. The provision has changed to reflect the changing nature of litigation. It had its genesis in 19th century English legislation[16] which was framed to guard against vexatious proceedings: the remedy restricted the litigant from further proceedings. Legislation was first enacted in Ontario in 1930. A 1959 amendment expanded the remedy to restrict the litigant from continuing proceedings already existing at the time of the order. In 1979 the Court of Appeal held that the provision applied to the commencement of proceedings (including the commencement of an appeal) but did not apply to interlocutory steps in a proceeding. This decision was reversed legislatively by amendment to the *Courts of Justice Act* in 1984 to include s.140(1)(b), to make it clear that the provision applies to "proceedings" and "steps in a proceeding".[17] Following this amendment, "the Court… has a broad discretion to make an appropriate order where vexatious proceedings have been instituted or proceedings have been conducted in a vexatious manner."[18]

[39] Early decisions focused on the problem of litigants bringing numerous unsuccessful proceedings without paying costs orders.[19] The remedy, though a serious derogation of the individual's right to access to the courts, did not

> … take away the individual's rights to redress. Rather, it provide[d] that if an order is made…, [the litigant] cannot seek redress until [s/]he has satisfied the proper authority that the proposed legal proceedings are not an abuse of the process of the Court and there is a prima facie ground for them.[20]

[40] Whether an action is vexatious is determined on an objective, not a subjective, test.[21]

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[15] *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., leave to appeal denied (1979), 31 NR 120 (SCC).

[16] See *Vexatious Actions Act, 1896* (UK), 59 & 60 Vict., c. 51, s.1, replaced by *Supreme Court of Judicature (Consolidation) Act, 1925* (UK), 15 & 16 Geo. V, c.49, s.51, amended by *Supreme Court of Judicature (Amendment) Act, 1959* (UK), c.39.

[17] S.O. 1984, c.11, s.218. The Court of Appeal has stated that this provision was intended to overcome the restrictive reading of s.140 in *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., leave to appeal denied (1979), 31 NR 120 (SCC): *Mascan Corp.* v. *French* (1988), 64 OR (2d) 1 (CA), per Blair J.A.

[18] *Bank of Montreal* v. *Cudini*, 2013 ONSC 482, per Gray J., para. 98.

[19] *Re Jones* (1902), 18 TLR 476, per Alverstone C.J.; *Re Chaffers* (1897), 76 LT 351; *Re Boaler*, [1915] 1 KB 21, per Scrutton J. (as he then was).

[20] *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., leave to appeal denied (1979), 31 NR 120 (SCC).

[21] *Logan* v. *Bank of Scotland (No. 2)*, [1906] 1 KB 141 at 151, cited with approval in *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., leave to appeal denied (1979), 31 NR 120 (SCC);

[41] The authority in s.140 is a reflection of the court's inherent jurisdiction to control its own process. It is a codification that does not derogate from the court's overarching inherent jurisdiction to control its own process.[22] While doubt is expressed in the academic literature,[23] based on *Foy* I conclude that it is clear law in Ontario that the court has the inherent jurisdiction to make an order in the manner of an order under s.140, and that the provision is a codification of that aspect of the court's "broad"[24] inherent jurisdiction. This small point is of some importance. Section 140 is not a "complete code" that precludes the court from making useful ancillary orders to make the provision effective to achieve its purpose. Considerable judicial creativity has been brought to bear with this aim in mind, some of which is reflected in the section near the end of this judgment on remedies.

(a) Legal Proceedings Brought Without Reasonable Grounds

[42] Historically, there are two primary ways in which proceedings may be brought without reasonable grounds:[25]

(i) to relitigate something that:

(a) has already been decided;[26]

(b) could be litigated in a subsisting proceeding;[27] or

(c) could have been litigated in a prior proceeding.[28]

Predie v. *Barrie (City)*, [2006] OJ No. 1524 (SCJ), para. 28; *Ontario* v. *Deutch*, [2004] OJ No. 535 (SCJ), paras. 18 and 21; *Dale Streiman Kurz LLP* v. *De Teresi* (2007), 84 OR (3d) 383 (SCJ), per Wein J., para. 9; *Dobson* v. *Green*, 2012 ONSC 4432, per K.L. Campbell J., para. 12.

[22] *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., leave to appeal denied (1979), 31 NR 120 (SCC), which makes the point that this observation has been confirmed repeatedly in the case law: see *Orpen* v. *AG Ontario* (1924), 56 OLR 327 at 332-333, [1925] DLR 366 at 369-370, varied on other grounds 56 OLR 530, [1925] 3 DLR 301; *Ross* v. *Scottish Union and National Insurance Co*. (1920), 47 OLR 308, 53 DLR 415; *Tolfree* v. *Clark*, [1943] OR 319, [1943] 2 DLR 554, aff'd [1943] OR 501, [1943] 3 DLR 684; *O'Connor* v. *Waldron* (1930), 65 OLR 407 at 409, [1930] 4 DLR 22 at 23, aff'd [1931] OR 608, [1931] 4 DLR 147, aff'd [1932] SCR 183, rev'd on other grounds [1935] AC 76, [1935] 1 DLR 260 (JCPC).

[23] I.H. Jacob, "The Inherent Jurisdiction of the Court" (1970), 23 *Current Legal Problems* 23; Law Reform Commission of Nova Scotia, *Vexatious Litigants* (Final Report – April 2006), pp. 7-8. See also *Commonwealth Trading Bank* v. *Inglis* (1974), 131 CLR 311 at 318 (Aus. HC); contra: *Yorke* v. *Paskell-Meade*, [1996] RJQ 1964 (Que. SC); *Mazhero* v. *Yukon (Ombudsman & Privacy Commissioner)*, 2001 YKSC 520, aff'd on other grounds 2002 YKCA 5; *Ebert* v. *Venvil*, [2000] Ch. 484 (CA).

[24] *Ebert* v. *Venvil*, [2000] Ch. 484 (CA).

[25] See generally *Foy* v. *Foy (No. 2)* (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., leave to appeal denied (1979), 31 NR 120 (SCC) and *Lang Michener Lash Johnston* v. *Fabian* (1987), 59 OR (2d) 353 at 358-359.

[26] *Stephenson* v. *Garnett*, [1898] 1 QB 677; *Re Vernazza*, [1959] 2 All ER 200, aff'd [1960] 1 All ER 183; *Re Langton*, [1966] 3 All ER 576.

[27] *Appleyard* v. *Appleyard*, [1950] OR 473 at 477, [1950] DLR 140 at 144.

(ii) to litigate an unreasonable claim that:

(a) cannot possibly succeed;[29]

(b) would lead to no possible good;[30]

(c) from which no reasonable person could possibly expect to obtain relief;[31]

(d) where the court has no power to grant the relief sought;[32] or

(e) where the applicant has no standing.[33]

This list is not exhaustive. The two general categories – relitigation and unreasonable claims – have never been closed and to the list has been added the general categories of (iii) disproportionality and (iv) vexatious extra-litigation conduct, including:

(a) where the damages claimed are grossly disproportionate to the claim;

(b) where the plaintiff asks for relief in a way which necessarily involves injustice;[34]

(c) where the party brings meritless appeals;[35]

(d) where the party brings interlocutory proceedings involving relitigation or unreasonable claims for relief;

(e) where a party asserts unreasonable defences;[36]

(f) where a party engages in vexatious conduct, within or outside the court process[37] including:

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[28] *Gunn* v. *Hudson's Bay Co.* (1915), 25 DLR 173 at 176, 9 WWR 216; *Wong* v. *Wong and DeMelo*, 2006 CanLII 51185 (ONSC), per Granger J.
[29] *Dyson* v. *AG*, [1911] 1 KB 410 at 418; *Beardmore* v. *City of Toronto*; *Smith* v. *City of London* (1909), 19 OLR 139.
[30] *Willis* v. *Earl Beauchamp* (1886), 11 PD 59.
[31] *Lawrence* v. *Lord Norreys* (1888), 39 Ch.D. 213, aff'd 15 App.Cas. 210.
[32] *Dreyfus* v. *Peruvian Guano Co.* (1889), 41 Ch.D. 151; *Wing* v. *Burn* (1928), 44 TLR 258; *Re Visser; The Queen of Holland* v. *Drukker*, [1928] 1 Ch. 877.
[33] *Tolfree* v. *Clark*, [1943] OR 319, [1943] 2 DLR 554, aff'd [1943] OR 501, [1943] 3 DLR 684.
[34] *Logan* v. *Bank of Scotland (No. 2)*, [1906] 1 KB 141; *Hollinger Bus Lines* v. *Ontario Labour Relations Board*, [1951] OR 562, [1951] 4 DLR 47, aff'd [1952] OR 366, [1952] 3 DLR 162.
[35] *Drewery* v. *Century City Developments Ltd. (No. 2)* (1975), 6 OR (2d) 299, 52 DLR (3d) 523.
[36] It is possible for a defendant to act in a vexatious manner: *Household Trust Co.* v. *Golden Horse Farms Inc.* (1992), 65 BCLR (2d) 355 (BCCA).

(i) vexatious administrative proceedings;[38]

(ii) vexatious complaints to professional regulators;

(iii) gross incivility;

(iv) defamation; and

(v) harassment.

[43] Henry J.'s description of vexatiousness in *Bishop* v. *Bishop* in 1987 has been cited with approval in many leading decisions to this day:[39]

(a) …bringing of one or more actions to determine an issue which has already been determined…

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief…

(c) … actions brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights…

(d) … grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings…

(e) … the Court must look at the whole history of the matter and not just whether there was originally a good cause of action…

(f) … failure… to pay costs of unsuccessful proceedings…

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[37] *Wong* v. *Wong and De Melo*, 2006 CanLII 51185 (ONSC), per Granger J., para. 27; *Bishop* v. *Bishop*, 2011 ONCA 211, para. 8, approving *Canada Post Corp.* v. *Varma*, [2000] FCJ No. 851 (FCTD), para. 23; *Dobson* v. *Green*, 2012 ONSC 4432, per K.L. Campbell J., para. 12.

[38] *Bishop* v. *Bishop*, 2011 ONCA 211, para. 9.: "the institution of non-judicial proceedings can, depending on the circumstances, constitute evidence from which a court may infer that court proceedings commenced by the litigant are not *bona fide* but the product of someone who is unreasonably obsessed with a cause and likely to pursue vexatious court proceedings on an indefinite basis unless stopped."

[39] *Bishop* v. *Bishop*, 2011 ONCA 211; *Direk* v. *Ontario (Attorney General)*, [2011] OJ No. 4896 (SCJ); *Houwelling Nurseries Ltd.* v. *Houwelling*, 2005 BCCA 8; *BC AG* v. *Lindsay*, 2007 BCCA 165; *Currie* v. *Halton Regional Police Services Board* (2003), 233 DLR (4th) 657 (Ont. CA); *Ontario* v. *Coote*, [2011] OJ No. 697, aff'd 2011 ONCA 562; *Dyce* v. *Lyons-Batstone*, 2012 ONSC 490; *R.* v. *Jogendra*, 2012 ONSC 3303; *Teplitsky Colson LLP* v. *Malamas*, [2012] OJ No. 2786; *Dobson* v. *Green*, 2012 ONSC 4432 (SCJ), per K.L. Campbell J.

(g) persistently taking unsuccessful appeals….[40]

[44] Ms Atas' conduct as a litigant reflects all the factors of my typology, and all the factors of Henry J.'s description. She is a quintessential vexatious litigant.

(b) Relitigation

[45] It is axiomatic that a thing, once decided, may not be relitigated. This principle is known as *res judicata*, a Latin phrase that translates as "the thing has been adjudicated". *Res judicata* includes "cause of action estoppel" which precludes relitigation of the same issue between the same parties. But the principle against relitigation goes further than this. It also covers claims that were not advanced, but should have been dealt with in prior litigation. The Court of Appeal put this point as follows back in 1933:

> Where a matter becomes the subject of litigation in and of adjudication by a Court of competent jurisdiction, the Court requires the parties to that litigation to bring forward their whole case, and will not, except under special circumstances, permit the same parties to open the same subject of litigation in respect of a matter which might have been brought forward… only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of *res judicata* applies, except in special cases, not only to points upon which the Court was actually required by the parties to form an opinion and pronounce judgment, but to every point which properly belonged to the subject of litigation, and which the parties exercising reasonable diligence might have brought forward at the trial.[41]

This statement of principle remains good law today.[42]

[46] In addition, there is the matter of issue estoppel. A final decision on an issue will bind the parties to that action.[43] Generally, where an issue has been authoritatively decided against a party, it may not be relitigated by that party again.[44] And finally, even where issue estoppel does not apply, it is an abuse of process to litigate an issue that has been conclusively decided against one.[45]

(c) The Public Interest

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[40] *Lang Michener Lang Johnston* v. *Fabian* (1987), 59 OR (2d) 353 at 358-359, per Henry J.
[41] *Upper* v. *Upper*, [1933] OR 1 at 7, [1933] 1 DLR 244 (CA).
[42] See *Wong* v. *Wong and De Melo*, 2006 CanLII 51185 (ONSC), per Granger J.
[43] *Heynen* v. *Frito Lay Canada Ltd.* (1999), 45 OR (3d) 776 (CA), leave to appeal denied August 3, 2000 (SCC).
[44] *Demeter* v. *British Pacific Life Insurance Co.* (1984), 48 OR (2d) 266 (CA).
[45] *Toronto (City)* v. *C.U.P.E. Local 79*, [2003] 3 SCR 77, per Arbour J.; *Niagara North Condominium Corp. No. 125* v. *Waddington*, 2007 ONCA 184, per Armstrong J.A.

[47] In recent times, jurists have noted that vexatious litigants are a drain on public resources and harm everyone seeking access to justice, not just the parties they sue. I quote from Power J. to this effect at the outset of these reasons.[46] van Rensburg J. (as she then was) has written:

> The court must adopt a greater role as gatekeeper of the publicly funded justice system in an era where cases are delayed for months because of lack of available court time, and other cases are stayed on the basis of delay….[47]

[48] H.K. O'Connell J. has written:

> Simply put in this era of strained court resources [this litigant] can no longer be permitted unrestrained access to the courts of Ontario,[48]

quoting from the Ontario Court of Appeal to the same effect.[49]

[49] The courts, particularly in the area of civil justice, have been overwhelmed for many years with insufficient resources, ever-increasing caseloads, and increased requirements from appellate courts to provide more robust reasons. Each challenge may have a cogent explanation, but the overall result is considerable pressure on the civil courts to be more productive, largely by insisting on proportional approaches to litigation at every stage of the process. It is now an important aspect of the judge's job, part of the judge's duty, to guard the scarce public resource that is court time and judicial resources. Vexatious litigants, like Ms Atas, are a gross drain on the system's resources, and need to be restrained within limits of reasonable behaviour so that other cases may also proceed.

5. The Facts

[50] Ms Atas was a registered real estate salesperson. She is the sole owner, officer and director of the respondent 626381 Ontario Limited (the "Corporate Respondent"), which in 1993 acquired a four-unit residential property at 298 St. George St., Toronto (the "St. George Street Property"). By 2003, Ms Atas lived in one of the units and rented out the other three units of the St. George Property. Ms Atas also owned 12 Wycliffe Avenue, Hamilton (the "Wycliffe Property"), which she acquired in her own name in 1991. The Wycliffe Property was a multi-unit residential property and Ms Atas rented out the units.

A. The St George Street Property

[51] As of 2003, there were three mortgages on the St. George Street Property:

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[46] *Roscoe* v. *Roscoe* (2005), 24 RFL (6th) 331, per Power J., para. 1, aff'd on this issue 2007 ONCA 516,
[47] *Ontario* v. *Coote*, [2011] OJ No. 697 (SCJ), aff'd 2011 ONCA 562, citing in support *Dale Streiman & Kurz* v. *De Teresi* (2007), 84 OR (3d) 383.
[48] *AG Canada* v. *Mennes*, 2012 ONSC 3918, per H.K. O'Connell J., para. 74
[49] *Susin* v. *Susin*, 2009 ONCA 231.

(a) a first mortgage to TD Bank in the face amount of $300,000;[50]

(b) a second mortgage to Household Financial Corporation in the face amount of $70,000;[51] and

(c) a third mortgage from a private lender, Sheldon Schwartz.[52]

[52] Ms Atas wanted to refinance the second and third mortgages. She approached Rui Ruivo of Atlantic (HS) Financial Corporation, a registered mortgage broker, to help her obtain replacement financing. Mr Ruivo was unable to obtain financing for Ms Atas and referred her to Tom Pires and his business, "Megacorp".[53]

[53] Mr Pires located mortgage financing of $178,000 for Ms Atas, $128,000 from John Gomes and John Kelly jointly as a second mortgage, and $50,000 from the self-directed RSP of Dorothy Hatcher as a third mortgage. Ms Hatcher was the mother of Ron Hatcher, then a lawyer, who was retained to act for the lenders on the financing transaction.[54] Michael Kimberly, then a lawyer, was retained by Ms Atas to act for the respondents on the financing transaction.

[54] The financing transaction required Ms Atas to pay various fees and commissions from the loan proceeds, and also required her to guarantee the loans personally. The transaction closed in February 2003 and the respondents received the loans, net of the agreed commissions and fees. Those commissions and fees were $22,000, so the net proceeds received by the respondents were $156,000.[55]

B. First Round of Proceedings: the Gomes/Kelly Mortgage Action

[55] On November 1, 2003, the Corporate Defendant defaulted on the second and third mortgages. At about the same time, Ms Atas complained to the Financial Services Commission of Ontario ("FSCO") about Mr Ruivo and to the Law Society of Upper Canada ("LSUC") about

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[50] Affidavit of Nadire Atas, Responding Record, tab 13, p.205.

[51] Affidavit of Nadire Atas, Responding Record, tab 13, p.205. This lender is named "Household Realty Corporation Ltd." elsewhere in the record; nothing turns on this discrepancy and I make no finding as to which form of the name is correct.

[52] Applicants' Factum, para. 8. The amount of this mortgage is not clear in the record.

[53] Mr Pires has confirmed that "Megacorp" (sometimes called "Mega Corp." in the record) is not a corporation but rather a trade name or sole proprietorship of his. If it was thought necessary, I would grant an order amending the title of proceedings to substitute "Tom Pires c.o.b as "Megacorp" for "Megacorp" in the title of proceedings to this application.

[54] The third mortgage was given formally by Canada Trust as trustee for the self-directed RSP of Dorothy Hatcher. Ron Hatcher was subsequently disbarred by the LSUC for mortgage fraud, but not in connection with any transaction at issue in this proceeding.

[55] See the mortgage commitment signed by the respondents: reply affidavit of Justin Anisman sworn March 18, 2015, Exhibit "B". There is some discrepancy in the record whether these charges were $22,000 or $21,500.

Mr Hatcher. These claims did not result in disciplinary action by the LSUC against either Mr Ruivo or Mr Hatcher.

[56] On January 15, 2014, Messrs Gomes and Kelly sued the respondents on the second mortgage seeking possession and payment; the action included a claim against Ms Atas on her guarantee (the "Gomes/Kelly Mortgage Action" (**04-CV-279726**[56]). This action was commenced by Rose and Rose as solicitors for Messrs Gomes and Kelly. When the respondents delivered a defence and counterclaim, Rose and Rose retained Stancer Gossin Rose as counsel on behalf of Messrs Gomes and Kelly.

[57] Ms Atas retained Rahul Shastri of Shastri Kagan to defend the Gomes/Kelly Mortgage Action and to commence a counterclaim. In defence of the claim, the respondents pleaded that the mortgage was a "nullity" because Mr Pires, who arranged it, was not a registered mortgage broker. In the counterclaim, Ms Atas sought an accounting of money paid to Mr Pires and "Megacorp" for fees and commissions on the transaction.

[58] Messrs Gomes and Kelly moved to strike the respondents' pleading on the basis that it did not disclose an arguable defence or claim. The respondents brought a cross-motion for an order that the mortgage be discharged by payment into court of an amount less than that demanded by the lenders. Pitt J. heard these motions on March 8, 2005. He struck out the respondents' statement of defence and counterclaim, without leave to amend. He concluded that:

> … the defendants have no relevant authority to support the proposition that a property owner may raise money on the security of the property, and refuse to repay the loan on the ground that the broker who arranged the loan contravened section 4(1) of the *Mortgages Act*….
>
> This provision does not prohibit anyone, even an unregistered mortgage broker, from lending mortgage money.[57]

He found that "all the money in dispute was deducted by the mortgagee or his counsel pursuant to a direction signed by the mortgagors."[58] In the result, Messrs Gomes and Kelly obtained judgment for $158,786.23, plus costs, as well as an order for possession of the St. George Street Property.

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[56] File coding conventions have changed over time. I have adopted common coding conventions for this judgment, placing the year the proceeding was commenced first (in this instance, "04"), then the identity of the court (in this instance, "CV" for Superior Court civil proceeding; the other code that sometimes appears in this judgment is "SC" for Small Claims Court proceeding), followed by the file number.
[57] *Gomes* v. *626381 Ontario Ltd.*, 2005 CarswellOnt 861, per Pitt J., para. 4.
[58] *Gomes* v. *626381 Ontario Ltd.*, 2005 CarswellOnt 861, per Pitt J., para. 6.

[59] In his costs endorsement, Pitt described the respondents' position as so "unreasonable" as to be a factor militating in favour of substantial indemnity costs.[59] In fact, Pitt J. considered the defence position to be so patently unreasonable "that the mortgagee ought not to have spent as much time as it did" defending against the respondents' position.[60] Pitt J. awarded costs of $7,151.67, inclusive, payable "forthwith" by the respondents to Messrs. Gomes and Kelly.[61]

[60] The respondents instructed Mr Shastri to appeal the judgment of Pitt J. Mr Shastri did so. Before this appeal was argued, Ms Atas terminated Mr Shastri's retainer and hired David Sloan of Baker Schneider LLP to conduct the appeal.

[61] Mr Shastri refused to provide his file to Mr Sloan unless he was paid for his services. The respondents agreed to a payment schedule. Mr Sloan agreed to stand for Mr Shastri's unpaid accounts if the respondents did not abide by the agreed payment schedule. Ms Atas agreed to indemnify Mr Sloan for any payment he made to Mr Shastri under these arrangements. Ms Atas then failed to pay Mr Shastri. Mr Sloan honoured his undertaking to Mr Shastri and paid his account. Ms Atas then refused to indemnify Mr Sloan and then refused to pay his account for services.[62]

[62] Mr Sloan obtained a stay of the judgment of Pitt J. pending the appeal.

[63] On October 17, 2005, the respondents terminated the retainer of Mr Sloan. They then retained lawyer Patrice Côté to argue the appeal on their behalf.

[64] The appeal was heard and dismissed by the Ontario Court of Appeal on November 17, 2005. The Court of Appeal's entire endorsement reads:

> We see no merit in the appeal. The motion judge properly held that the alleged violation of s.4 of the *Mortgages Act* offered no defence to the claim for possession of the property and the amount owing on the mortgage. The motion judge was entitled to look at the documents specifically identified in the pleadings in considering the Rule 21.01(b) motion. The mortgage commitment provided the accounting which the appellant had pleaded had not been given. The appellant does not argue that the motion judge erred in holding that there was no legal merit to the claim based on s.42 of the *Mortgages Act*.
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> The pleading, as framed was, therefore, properly struck. The appellant did not ask the motion judge for leave to amend the pleading. We see no basis upon

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[59] *Gomes* v. *626381 Ontario Ltd.*, 2005 CarswellOnt 1473, per Pitt J., para. 2.
[60] *Gomes* v. *626381 Ontario Ltd.*, 2005 CarswellOnt 1463, per Pitt J., para. 3.
[61] *Gomes* v. *626381 Ontario Ltd.*, 2005 CarswellOnt 1463, per Pitt J., para. 5 and 6.
[62] This account is taken from the pleadings and has not been proved. It is not clear on the record what defence Ms Atas says that she has for this conduct.

> which to grant leave to amend so that the appellant can advance entirely new causes of action. The appeal is dismissed.
>
> Costs to the respondent in the amount of $4,000 "all in".[63]

[65] In January 2006, the respondents retained David Brooker to negotiate settlement of the judgment in the Gomes/Kelly Mortgage Action. Ray Stancer acted for the mortgagees in this negotiation. Mr Brooker says that he entered into an agreement with Stancer to settle the judgment, with Ms Atas' agreement and on her instructions. He says that Ms Atas then resiled from that agreement. In April 2006, Mr Brooker stopped acting for the respondents because of outstanding accounts.

[66] Ms Atas denies that she instructed Mr Brooker to agree to the settlement he negotiated with Mr Stancer.

[67] By mid-2006, the respondents had fee disputes with four separate lawyers who had represented them in the Gomes/Kelly Mortgage Action:

(i) Mr Sloan sued Ms Atas in Small Claims Court (**07-SC-504451**) for unpaid fees of $8,035.37. Ms Atas filed an extensive defence in which she alleged (among other things) that Mr Sloan bullied her, made false representations to her, deceived her, was "a liar, a crook, and has engaged in various deception during his representation" and that Mr Sloan "has a history of deception in his personal life in that shortly after [a] judgment against him, he filed for bankruptcy". Ms Atas counterclaimed for $250,000.

(ii) Mr Brooker sued Ms Atas in Small Claims Court (**06-SC-39478**) to collect his fees. Unknown to Mr Brooker, Ms Atas had obtained an order by requisition to assess Mr Brooker's accounts. The Small Claims Court action was stayed as a consequence. What happened in the assessment proceeding was eventually considered by Newbould J. who, on January 14, 2009, found Ms Atas' conduct to have been an abuse of the process of the court:

> [3] What has followed, in my view of the evidence, is a history of Ms Atas taking every possible step to prevent Mr. Brooker from obtaining payment of whatever amount may be owing. Included have been steps taken by her on several occasions to adjourn her own proceedings that she had brought.
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> [4] The Assessment Office in Toronto set November 27, 2006 for a preliminary appointment to set a date for the assessment hearing. At the preliminary appointment, Ms Atas took the position that she was

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[63] *Gomes* v. *626381 Ontario Ltd.*, 2005 CarswellOnt 6734 (Ont. CA), per Cronk, Doherty and MacFarland JJ.A.

disputing the retainer of Mr. Booker by her and her corporation, even though she had obtained an order by requisition to assess the accounts, and she stated she would be retaining a lawyer. A date for the assessment hearing was set for April 2, 2007.

[5] On March 23, 2007 Ms Atas advised Mr. Brooker that she would need an adjournment of the assessment because she did not have a lawyer. Over the next week she made further allegations against Mr. Brooker, including allegations of misrepresentation and negligence and said she would be filing a complaint against him to the Law Society.

[6] Mr. Brooker had made clear since February 26, 2007 that he would not consent to any adjournment of the assessment hearing, having taken the position that Ms Atas had sufficient time to deal with the issues before then. At 6:00 a.m. on the day of the assessment hearing on April 2, 2007, Ms Atas sent an e-mail to Mr. Brooker saying that she had been treated in an emergency department the day before and had to see her doctor. A few minutes later she sent a note from a Dr. Moffatt dated April 1, 2007 saying that Ms Atas had been under care at the Women's College Hospital from 8:16 p.m. to 10:30 p.m. that day and that she should be able to work on the following day, April 2, 2007.

[7] At the hearing before Assessment Officer Moquin on April 2, 2007, Ms Atas said she would be retaining a lawyer to represent her and the corporation, that she was disputing the retainer of Mr. Brooker and that she would be bringing a motion on the issue of the retainer on June 22, 2007. As a result, the assessment was adjourned by Assessment Officer Moquin to a date to the fixed by the Assessment Office after the motion scheduled for June 22, 2007 had been dealt with. It was also ordered that upon Ms Atas paying $300 to Mr. Brooker, he would provide her with a copy of his entire file.

[8] Mr. Brooker was not available on the June 22, 2007 date that Ms Atas had obtained for her proposed motion and he so advised the motion scheduling office. Ms Atas was advised by the office to obtain a further date, which she did not. After further exchanges regarding a proposed date, Ms Atas advised Mr. Brooker on June 27, 2007 that she now would not be disputing the retainer and would proceed with the assessment of the accounts. Thus the purported necessity for the prior adjournment of the assessment hearing on April 2, 2007 was gone.

[9] When an attempt was made by Mr. Brooker's office to obtain a new appointment date for the assessment, Ms Atas e-mailed the Assessment Office saying she would not agree to the assessment hearing being brought back on until a preliminary motion was heard to either replace

Assessment Officer Moquin or to have her recuse herself due to her bias and inconsistency on the matter and a previous matter.

[10] Because Ms Atas would not agree to a date, the Assessment Office took the position that they could not set down the assessment as it was her requisition for an assessment that they were dealing with. Mr. Brooker therefore brought a motion in the Superior Court returnable September 18, 2007 for an order dismissing the assessment or alternatively setting it down to be heard preemptory to the clients, and for other consequential relief. Three days before the return of the motion Ms Atas contacted Mr. Brooker to advise she was not available on the return date, a date that she had arranged in the first place, and that she had made an appointment in Triage Court for September 14, 2007. As a result of the attendance at the Triage Court that day, an order was made that the assessment was to proceed. Subsequently a hearing date of January 25, 2008 for the assessment was obtained.

[11] On January 25, 2008 Mr. Brooker and Ms Atas appeared before Assessment Officer Kane. Ms Atas attempted to obtain a further adjournment saying that she had retained Mr. Benjamin Salsberg. Assessment Officer Kane indicate he would adjourn the hearing one further time to February 25, 2008 in order to allow the clients to bring counsel with them to the hearing. Ms Atas refused to agree to those terms and Assessment Office Kane then indicated that the hearing would proceed on that date. At that point Ms Atas stood up and indicated she was ill and she apparently fainted, and after which paramedics were called who took her away on a stretcher. Assessment Officer Kane adjourned the matter and made an endorsement that due to Ms Atas' sudden illness the assessment was adjourned to February 25, 2008 peremptory to the clients. He made a cost order in the following terms:

> Costs for today to the solicitor in the amount of $500 payable by February 8, 2008 or this application will be dismissed and Mr. Brooker can pursue his Small Claims action. I am seized of this assessment.

[12] Ms Atas did not pay the costs ordered Assessment Officer Kane. On February 15, 2008 Assessment Officer Kane signed an endorsement stating that "the costs have not been paid and this matter will now be dismissed and the February 25, 2008 date has now been cancelled."

[13] On March 3, 2008 a notice of motion was served by Mr. Salsberg dated March 3, 2008 returnable before a judge on April 21, 2008 for an order opposing confirmation of the orders of Assessment Officer Kane dated February 8, 2008 and February 15, 2008 and any certificate of

assessment issued by the Assessment Officer as a consequence thereof. The grounds for the motion included the ground that the assessment officer exceeded his jurisdiction in making his orders, that he erred in fact and law in imposing the terms contained in the orders, and he erred in failing refusing to grant an adjournment to the clients without the imposition of terms.

[14] Mr. Brooker sought to adjourn the motion as the date of April 21, 2008 was chosen by Ms Atas without his agreement and he was unavailable. Eventually a return date of May 30, 2008 was agreed and the motions office was so advised.

[15] On May 22, 2008, Mr. Salsberg faxed a letter to Mr. Brooker stating that he had been instructed to abandon the motion scheduled for May 30, 2008 and on May 29, Mr. Salsberg wrote to the scheduling office to cancel the motion booked for May 30, 2008.

[16] On June 10, 2008 there was faxed to Mr. Brooker an undated Report and Certificate of Assessment signed by Assessment Officer Kane in which he recited his order of January 25, 2008 adjourning the matter to February 25, 2008 on the condition that Ms Atas pay $500 for costs by February 8, 2008. The Report and Certificate stated that "as of February 12, 2008 the costs have not been paid" and that as Ms Atas did not comply with the terms of the adjournment, "I find that she has abandoned her application and have dismissed the assessment." He further made an order that the clients pay the solicitor $500 for costs.

[17] There is no evidence that this Report and Certificate was sent from the Assessment Office to Ms Atas. Ms Atas' affidavit delivered at the commencement of the hearing before me states that she received the report and certificate on August 20, 2008 from Mr. Brooker's office.

[18] Mr. Brooker then took steps to have the Small Claims Court action that he had commenced in 2006 proceed. At a settlement conference in the Small Claims Court on August 21, 2008 Ms Atas advised the deputy judge that she had appealed the assessment certificate. The deputy judge then endorsed the record that Ms Atas was to file proof that she had commenced an appeal within ten days failing which the action would be set down.

[19] On August 28, 2008 Ms Atas served a notice of motion returnable before a judge on December 12, 2008 for orders opposing the confirmation of the Report and Certificate of Assessment Officer Kane and his earlier orders and to set aside and dismiss the Report and Certificate. There has been no explanation given by her why she chose a

> date nearly four months away. The motion stated that at the hearing of the motion the transcripts of the appearances before the Assessment Officer and an affidavit of Nadire Atas would be used. No affidavit of anyone was served with the notice of motion, nor were the transcripts or any evidence that the transcripts had been ordered. There were no solicitors named as acting for Ms Atas or her numbered company. The grounds for the motion were in essence the same grounds that had been raised by Mr. Salsberg in his motion returnable April 21, 2008 that had later been abandoned.
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> [20] On December 7, 2008 Ms Atas e-mailed Mr. Brooker to say that she had rescheduled her motion that was returnable on December 12, 2008 to March 17, 2009 and she stated that if the date did not work for Mr. Brooker, she would consent to another date subsequent to that. No reasons of any kind were given by her for the adjournment. It was as a result of that last e-mail that the present motion has been brought by Mr. Brooker.[64]

In his analysis of the case, Newbould J. comments repeatedly on improper conduct by Ms Atas as a litigant:

> [21] Rule 58.10(1) provides that on request, an assessment officer shall withhold the certificate for seven days in order to allow a party dissatisfied with the decision to serve objections. If objections are served, the assessment officer is to reconsider the decision made.
>
> [22] Section 17(b) of the *Courts of Justice Act* provides for an appeal to the Superior Court of Justice from a certificate of assessment of costs on an issue in respect of which an objection was served under the rules of court. Rule 62.01(2) provides that the appeal shall be commenced within seven days after the making of the order or certificate appealed from.
>
> [23] In my view Ms Atas and her numbered company have no right to be proceeding in the Superior Court to attempt to set aside the decisions and report and certificate of Assessment Officer Kane.
>
> [24 Section 17(b) of the *Courts of Justice Act* provides for an appeal from a certificate of assessment on an issue with respect of which an objection was served under the rules of court. The motion brought on behalf of the clients by Mr. Salsberg returnable April 21, 2008 opposed confirmation of the orders of Assessment Officer Kane dated February 8

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[64] *Brooker* v. *626381 Ontario Limited*, 2009 CanLII 710 (ONSC), per Newbould J., paras. 3-20.

and 15, 2008 and any certificate of assessment issued as a consequence thereof. That motion, however, was abandoned. Even if there had been an objection taken under Rule 58.10 to what Assessment Officer Kane did, which there was not, the abandonment of the subsequent motion in my view precluded any appeal by virtue of section 17(b) of the *Courts of Justice Act* as there was no objection taken to what Assessment Officer Kane did.

[25] Even if there were a right of appeal, I would hold that the steps taken by Ms Atas purporting to appeal the various orders and Certificate of Master Kane are an abuse of the processes of this Court.

[26] The notice of motion was obviously served as a result of the settlement conference in the Small Claims Court that took place on August 21, 2008 in which Ms Atas said she had appealed the Assessment Officer's decision and in which it was ordered that unless she filed evidence of the appeal within 10 days, the small claims action of Mr. Brooker would be set down. Ms Atas realized that she would have to start some appeal process in order to prevent the Small Claims Court action from proceeding. It is these kinds of reactive steps that have characterized Ms Atas' actions throughout.

[27] Ms Atas has not to date served any affidavit in support of her notice of motion nor has she taken any steps to order the transcripts of the hearings before the Assessment Officer, both of which were stated in her motion to be material that would be relied upon in the motion. It is now nearly five months since the notice of motion was served. No explanation was provided to me by Ms Atas for not delivering these things. It is quite apparent that Ms Atas commenced her latest motion without any *bona fide* intention of proceeding with it. This is an abuse of process and not to be condoned.

[28] The unilateral step taken shortly before the return date of December 12, 2008 to have it adjourned to March 17, 2009 is indicative of Ms Atas' attempts to delay matters for no reason. Ms Atas provided no explanation why that was done. Her unilateral adjournment to March 17, 2009 was another indication of her bad faith and her abusing the process of the court.

[29] Ms Atas attempted to adjourn the present motion that was heard on December 22, 2008. The week before she e-mailed the motions office saying she was unable to attend on December 22, 2008 and she sent in a doctor's letter saying she was ill and unable to attend the court proceedings on the week of Christmas. The letter was dated November 28, 2008. It stated that Ms Atas was seriously ill and significantly

> disabled by her illness and that she would be expected to be unable to be involved in proceedings for two to three months. What the illness was and what disability there was not explained. As a result of the letter Ms Atas managed to obtain an appointment at Triage Court on December 19, 2008 but this was cancelled on the objections of Mr. Brooker.
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> [30] When Ms Atas appeared before me on December 22, 2008, she requested an adjournment and said she was too ill to proceed. I asked her what the illness was but she was not able to say. Nor could she say what medication she was taking. She appeared to be able to speak clearly and to understand perfectly well what was being said by me and by Mr. Brooker and to respond to everything. She did not at all look ill. In light of her manner and appearance and the fact that no particulars of any kind were provided as to what her illness might be or its symptoms, I declined to adjourn the matter.
>
> [31] It is also an abuse of court to now attempt to raise again the very issues that were raised in the notice of motion served by Mr. Salsberg and later abandoned on Ms Atas' instructions. If the issues were seriously being advanced, they would or should have been proceeded with at that time. There has been no explanation of any kind given why the previous motion was abandoned and why there are attempts now to revive it. The only inference that one can draw is that the attempt to revive it is only to delay matters again.
>
> [32] In all the circumstances, even if there were a right of appeal available to Ms Atas and her numbered company, I would strike the appeal as an abuse of the process of this Court.
>
> [33] In the circumstances, I order that the notice of motion of Ms Atas and 626381 Ontario Limited dated August 25, 2008 and currently returnable on March 17, 2009 be dismissed.[65]

Newbould J.'s costs endorsement, dated February 17, 2009, states as follows:

> … I ruled that the motion of Ms Atas… was brought in bad faith and an abuse of process…. In her costs submissions Ms Atas made no submissions directly on costs but rather submitted that my decision was incorrect and that I should reconsider it.[66]

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[65] *Brooker* v. *626381 Ontario Limited*, [2009] OJ No. 138 (SCJ), per Newbould J., paras. 21-33.
[66] *Brooker* v. *626381 Ontario Limited*, 2009 CanLII 6623 (ONSC), per Newbould J., para. 1.

Newbould J. ordered costs on a "full indemnity basis" fixed at $3,033.40, payable by the respondents to Mr Brooker.

(iii) Mr Côté and Ms Atas both commenced assessment proceedings (**05-CV-302891** and **05-CV-302736**) in respect to Mr Côté's account of $7,573.38. Ms Atas sought multiple adjournments and on the last appearance was escorted from the hearing room by court officers because of her conduct. The assessment proceeded in her absence. Ms Atas then moved to oppose confirmation of the assessment report. This motion came before Hoy J. (as she then was), who described Ms Atas' conduct in the assessment process:

> [3] Clients[67] appealed the motion judge's decision. After the appeal was perfected, and approximately one month before the appeal was scheduled to be heard, they retained new counsel, namely the Solicitor, to continue with the appeal. The appeal was unsuccessful. The Solicitor's evidence was that he had warned the Clients that the appeal would likely be unsuccessful.
>
> [4] An assessment of the Solicitor's two accounts, totaling $7,573.38, all inclusive, was ordered on December 21, 2005, on the requisition of the Clients, and again on December 22, 2005, on requisition by the Solicitor. The Assessment Officer granted the Clients two adjournments, the second of which was peremptory on the Clients. On April 30, 2007, the Assessment Officer refused to grant the Clients a third adjournment, and the assessment proceeded, ultimately in the absence of Ms Atas who was escorted from the hearing room by court officers as a consequence of her conduct. In the result, only the Solicitor testified at the hearing. On May 4, 2007, the Assessment Officer provided lengthy oral reasons for her assessment, the transcript of which is some 40 some pages. She assessed the two accounts at $7,200.00, inclusive of GST and disbursements.
>
> [5] The grounds advanced by the Clients in their motion record for opposing the assessment are that: (1) they dispute the Solicitor's retainer, and the Assessment Officer therefore did not have jurisdiction; (2) the Assessment Officer erred in refusing to grant the clients an adjournment of the assessment hearing; and (3) the Assessment Officer erred in fact and law in finding that (i) the time expended was justified, (ii) the Clients were sufficiently knowledgeable about the litigation process, (iii) the underlying motive on the part of the Clients was to delay the inevitable in having to pay the mortgage monies owed, (iv) the matter was of some complexity, and (v) the Solicitor exercised the requisite degree of skill and competence in terms of the appeal litigation.

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[67] The "clients" were the respondents in this application.

[6] For the reasons that follow, the Clients' motion is dismissed.

Dispute as to Retainer

[7] If there is a *bona fide* dispute as to a solicitor's retainer that is more than a dispute as to quantum, the assessment officer has no jurisdiction to proceed. Such a dispute can only be resolved through the ordinary remedy of civil litigation….

[8] The Assessment Officer took great pains in her reasons to outline the events leading up to the April 30, 2007 assessment hearing, including that the second adjournment of the assessment hearing granted to the Clients on December 18, 2006, was to permit a motion Ms Atas advised she had served and filed disputing the retainer, returnable on March 30, 2007, to be heard before the assessment hearing proceeded. The hearing was adjourned at that point on the basis that if the assessment was still required following the March 30, 2007 motion, it would proceed on April 30, 2007, peremptory on the Clients, and that the Clients would pay $500 in costs thrown away to the Solicitor. Upon this determination, the Clients changed their minds, and wished to proceed with the hearing on December 18, 2006. While the Assessment Officer expressed doubts in her December 18, 2006 endorsement regarding the *bona fides* of the motion with respect to the retainer, in light of this change of position by the Clients, having regard to the question raised about the Assessment Officer's jurisdiction, she did not proceed with the hearing on December 18, 2006.

[9] The Clients telephoned the Court and sought and obtained an adjournment of the March 30, 2007 motion, a few days before the return date. Ms Atas had not filed or served motion materials. Although Ms Atas advised orally at the hearing that a June 26, 2007 date had been obtained, there was no evidence before the Assessment Officer at the hearing that another date had been secured for the motion regarding the retainer, or why the retainer motion had been unilaterally adjourned. Given what had transpired, the Assessment Officer doubted the June 26, 2007 date in the absence of confirmation.

[10] The Clients at no time filed any documents with the Assessment Officer. The only documents before her, relative to the retainer, was the signed, written Retainer Agreement dated October 15, 2005, which, according to the Assessment Officer's reasons, "set out, among other things, what legal services Mr. Côté was to provide to the clients. He also stated in this Retainer Agreement that his hourly rate would be $225.00 per hour."

[11] It is clear to me from the Assessment Officer's reasons that she concluded, based on the Clients' conduct, and I accept, that there was not a *bona fide* dispute as to the retainer.

[12] This conclusion is buttressed by what transpired on this motion. At the outset of the hearing, current counsel for the Clients indicated that the Clients would not proceed with the motion disputing the retainer, and that the retainer issue would be addressed solely in the submissions made before me. Subsequently, current counsel for the Clients indicated that he had not seen the October 15, 2005 Retainer Agreement and he did not know why or on what basis the Clients disputed the retainer. The Clients filed no materials with the Court with respect to the retainer issue. Current counsel for the Clients unequivocally stated that he was not in a position to proceed to dispute, and therefore did not dispute, the retainer.

[13] Accordingly, the Clients' first ground for opposing the assessment is not made out.

The Assessment Officer's Refusal to Adjourn the Assessment Hearing

[14] The Assessment Officer's refusal to grant an adjournment is the primary ground on which the Clients object to the assessment.

[15] The granting or refusal of an adjournment is discretionary. That discretion must be exercised judicially, balancing the interests of the parties, the objective being to provide a fair hearing, as expeditiously as possible. The onus is on the appellant to show that in refusing the adjournment the Assessment Officer failed to exercise her discretion judicially. The provision of reasons is a factor to take into consideration when determining whether or not the requirements of procedural fairness have been met….

[16] In this case, I have both a transcript of the assessment hearing and the detailed reasons of the Assessment Officer. The transcript indicates that the Assessment Officer engaged in discussions with Ms Atas for about an hour concerning the adjournment. After the Assessment Officer determined that the assessment would proceed, she provided Ms Atas with the opportunity to contact the lawyer whom she indicated she had retained, and who Ms Atas advised was in his office, by telephone. Ms Atas indicated that the lawyer refused to take her call.

[17] Having reviewed both the transcript and the reasons, I am satisfied that the Assessment Officer declined the request for an adjournment on proper principles.

[18] The transcript reflects the Assessment Officer's cumulative, and considerable, frustration with the Clients.

[19] As the Assessment Officer carefully details in her reasons, the hearing had been adjourned twice before, each time at the request of the Clients. The last adjournment had been peremptory on the Clients. The Clients had not complied with the Assessment Officer's December 18, 2006 order to pay costs of $500.00 to the Solicitor within 15 days. The Clients had not followed through with the motion regarding the retainer scheduled for March 30, 2007, which had been one of the grounds for the granting of the second adjournment, and, indeed, had unilaterally adjourned the motion, without the consent of the Solicitor, who incurred the cost of preparing for the motion.

[20] I have considered that Ms Atas was self-represented, representing herself and her corporation, 626381 Ontario Ltd., and that she sought the adjournment because, she advised the Assessment Officer, she and her corporation had now just retained a lawyer, and the lawyer required an adjournment to prepare for the assessment. The Assessment Officer explains in her reasons that this was, "for similar reasons she had given in her previous requests for adjournments." (The first adjournment, on September 27, 2006 was to provide the Clients with additional time to obtain legal representation and prepare for the assessment. At the second, on December 18, 2006, the Clients had not yet retained counsel.)

[21] Ms Atas appears to have considerable experience in retaining lawyers. Based on the transcript of the assessment hearing and the submissions made on this motion, she retained (1) counsel to defend the action in which the Rule 21 motion was heard, to respond to the Rule 21 motion and appeal, the decision on that motion, and in respect of the appeal whom she proposes to sue for negligence; (2) counsel to attempt to settle the appeal; (3) the Solicitor, who ultimately attended on the appeal, and was unaware of the activities of the second counsel; (4) the counsel who she indicates she retained in relation to the assessment hearing; and (5) current counsel, who represents her on this motion.

[22] The fact that the party seeking the adjournment is self-represented does not mean that an adjournment must always be granted. See, for example, *Edward v. Niagara*, *supra*, where Cameron J.'s refusal to grant an adjournment to a self-represented party was upheld.

[23] Counsel for the Clients argues that while the refusal to grant the adjournment was perhaps warranted in the first instance, the Assessment Officer should have reconsidered her decision after Ms Atas was evicted from the hearing room because of her conduct, and concluded that the

> hearing could not proceed in the absence of Ms Atas. As a result of the absence of Ms Atas, the only testimony at the assessment hearing was that of the Solicitor.
>
> [24] The difficulty I have with this submission is that it in effect rewards Ms Atas for her unacceptable conduct, after the Assessment Officer's ruling, which resulted in her eviction from the courtroom. She seeks to invoke procedural fairness when she has not respected the court's procedures. I also note that before Ms Atas was ultimately escorted from the courtroom, she had threatened to walk out. Litigants cannot be permitted to frustrate a court's denial of an adjournment simply by walking out.[68]

I understand that Mr Côté did obtain an order for payment of his account, registered an execution, and was paid $10,141.16 to discharge that execution at the time of the sale of the St George Street Property (in June 2009). So far as I can tell from the materials filed, Mr Côté's claims for professional fees have thus been paid and no litigation remains in respect to that issue.

[68] Thus, as of mid-2006, in addition to the Gomes/Kelly Mortgage Action, Ms Atas had:

- complained twice to FSCO
- complained twice to LSUC
- repudiated an agreement made on her behalf by Mr Sloan and breached her agreed fee payment schedule with Mr Shastri
- repudiated her agreement with Mr Sloan and failed to honour her guarantee to reimburse Mr Sloan for fees he paid to Mr Shastri
- repudiated an agreement made on her behalf by Mr Brooker
- retained and ended professional relationships with four lawyers with whom she ended up in fee disputes.

[69] In May 2006, Ms Atas retained Moses Muyal and Taras Kulish of Steinberg Morton Frymer to assist her in refinancing the St. George Street Property by way of a new first mortgage

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[68] *Atas v. Côté*, [2008] OJ No. 2631 (SCJ), per A. Hoy J. (as she then was).

with Peoples Trust.[69] Peoples Trust was represented by Bresver, Grossman, Scheininger & Chapman.

[70] Messrs Muyal and Kulish negotiated with Mr Stancer, who continued to represent Messrs Gomes and Kelly. Part of the negotiated settlement included the respondents providing a full and final release of Messrs Gomes and Kelly and Ms Hatcher. The respondents agreed, the transaction closed, and then Ms Atas refused to enter into the release. She then disputed that she agreed to provide the release on behalf of the respondents or that she had agreed to the settlement. In the aftermath, Ms Atas refused to pay her legal bill, and Steinberg Morton Frymer commenced assessment proceedings against the respondents.

[71] It is not contested that the respondents borrowed $178,000, $128,000 of it secured by the second mortgage. It is not contested that the second mortgage went into default. What is contested is whether the respondents should have been liable to pay roughly $22,000 in fees and commissions on the two mortgage transactions. Ms Atas also takes the position that she sought one mortgage, not two, and one lender, not three. She denies liability for multiple default penalties arising because of these changes.

[72] The motions judge, Pitt J., found that Ms Atas' concerns were not a basis to deny the claim of the lenders. That finding was upheld by the Court of Appeal. And the decision of the Court of Appeal on this point authoritatively decides these issues. Ms Atas has been estopped from litigating this issue further since November 2005. The judgment of Pitt J. was paid as a result of the refinancing with Peoples Trust, and that should have been an end to the matter.

[73] Ms Atas' current position respecting the Gomes/Kelly Mortgage Action was provided to the court in a case management meeting on March 27, 2015, and is reflected in paragraph 2 of the court's order from that conference:

> Judgment in **04-CV-279276** has been given, that decision has been upheld by the Court of Appeal, and the judgment has been paid. Ms Atas disputes the costs. She says that she paid the claimed costs to discharge the mortgage and then sought an assessment of those costs.[70] That assessment has not been conducted on the merits. Ms Atas says that she still wishes to have these costs assessed. In all of these circumstances, Ms Atas has made a request pursuant to R.15.02 that counsel confirm his authority to commence and prosecute the underlying proceeding. That request need not be answered now. In effect, all that remains (if it remains, a point I do not decide today), is Ms Atas' costs assessment. If that

[69] There was also a second mortgage from Janet Louise Hilson. It is not clear in the record whether the second mortgage was obtained at the same time as the first mortgage or whether that was a later transaction.

[70] It is not clear on the record whether "costs" means mortgage enforcement costs, multiple default fees, both, or whether it includes more.

ever proceeds on the merits, then any issues about counsel's authority to act in the assessment may be addressed before me.

[74] Ms Atas has raised two points here, however. She takes the position that the enforcement and other mortgage costs in the Gomes/Kelly Mortgage Action remain to be determined and she challenges the amounts that she has paid. She also takes the position that Mr Gomes never authorized the mortgage enforcement proceedings. She takes the position that, because of this lack of authority, there is a basis on which she can ask the court to set aside the entire judgment in the Gomes/Kelly Action – a judgment granted and upheld on appeal in 2005 and paid in 2006.

[75] I give directions at the end of this judgment in respect to these requests.[71] For the purpose of the balance of these reasons, I treat the judgment of Pitt J. as final and authoritative, and not capable of challenge now. Its authority is not brought into question because Ms Atas disagrees with it or proposes to take steps to have it varied or set aside. It stands, authoritatively, unless and until it is set aside or varied.

C. Second Round of Proceedings: Claims Against Lawyers and Mortgage Brokers

[76] The respondents sued Messrs Shastri, Côté and Sloan and their law firms (**07-CV-343745 PD1**) alleging that all three lawyers were negligent in failing to argue before Pitt J. or the Court of Appeal the issue of "unlawful lending charges". The action is a collateral attack on the Gomes/Kelly Mortgage Action judgment.

[77] The respondents sued Messrs Pires, Ruivo, Hatcher and Pa, "Megacorp" and Atlantic (HS) Financial Corporation (Mr Pa's company)(**08-CV-346821 PD3**). This action repeated the allegations in the respondents' defence and counterclaim in the Gomes/Kelly Mortgage Action and also alleged undisclosed commissions and fees that "were contrary to the laws of… Ontario". The thrust of the claim is that Mr Pires was not a registered mortgage broker, that Mr Ruivo provided Ms Atas' information to Mr Pires in breach of confidence, and that the $178,000 mortgage transaction resulted in "various undisclosed commissions or fees" that "were not disclosed to the plaintiffs and… were contrary to the laws of… Ontario."[72] Ms Atas claims damages of $1 million and punitive damages of $150,000 in respect to an action for undisclosed commissions respecting $178,000 in mortgage advances. The plaintiffs also claim that the mortgage was split into two mortgages, that the transaction was misrepresented to them, and that fees deducted from the mortgages were not properly described. Again, the action is a collateral attack on the Gomes/Kelly Mortgage Action judgment.

[78] The respondents sued Mr Brooker (**08-CV-349206 PD3**) for Brooker's alleged failure to "challenge and obtain a determination as to the proper amounts due and owing in respect of the Mortgages and further obtain the setting aside, amendment or rectification to the Judgment so as

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[71] See para. 342, below.
[72] Amended amended statement of claim in **08-CV-346821 PD3**, para. 14.

to provide for the correct amounts properly due and owing under the Mortgages." Once again, this action is a collateral attack on the Gomes/Kelly Mortgage Action judgment.

[79] The respondents sued Messrs Kulish and Muyal and their law firm (**08-CV-354613**) for their alleged failure to obtain detailed discharge statements, to reserve the right to contest the amount paid to Messrs Gomes and Kelly, and for having paid Messrs Gomes and Kelly without "proper authorization". This action is not a collateral attack on the Gomes/Kelly Mortgage Action judgment directly. Its premise is that the experienced solicitors agreed to and implemented a settlement without authority from their client. This central allegation is theoretically possible. Standing alone, in one lawsuit, it would be a tenable claim. In the context of these proceedings, the claim seems highly improbable and likely premised on Ms Atas seeking to preserve her claims to a mortgage enforcement costs assessment in the Gomes/Kelly Mortgage Action and to delay or avoid paying her legal account with Messrs Kulish and Muyal.

[80] These actions in the "Second Round of Proceedings were all filed on behalf of the respondents by lawyer Ben Salsberg, who later removed himself from the record. Ms Atas subsequently sued Mr Salsberg and his law firm.

D. Third Round of Proceedings: Peoples Trust Mortgage Proceedings

(a) The Wycliffe Property

[81] On July 5, 2005, Ms Atas gave Peoples Trust a mortgage for $165,000 secured against the Wycliffe Property. The mortgage had a three year term.

[82] In September 2007, Ms Atas defaulted on the mortgage. On October 2, 2007, Peoples Trust demanded payment of the arrears. On October 16, 2007, Ms Atas emailed a doctor's note which she offered as an excuse for not bringing the mortgage into good standing. On October 17, 2007, Peoples Trust commenced proceedings for payment and possession of the property. On October 22, 2007, Ms Atas provided a further doctor's note as a further excuse for her delay in putting the mortgage into good standing. On January 28, 2008, Ms Atas paid $39,371.95 to Peoples Trust, thereby bringing the mortgage into good standing. On February 6, 2008, Peoples Trust discontinued its mortgage enforcement action.

[83] The mortgage continued on a month-to-month basis after maturity on August 1, 2008. On September 15, 2008, Peoples Trust demanded full payment of the mortgage, advising that the mortgage would not be renewed or extended further.

[84] On October 21, 2008, Peoples Trust sued Ms Atas for payment of the mortgage and for possession of the Wycliffe Property (the "Peoples Trust Wycliffe Mortgage Action")(**08-CV-364585**). On November 18, 2008, Peoples Trust issued a Notice of Sale Under Mortgage with respect to the Wycliffe Property.

[85] On December 3, 2008, Ms Atas served a statement of defence in which she alleged that (a) she had not received independent legal advice in respect to the mortgage; (b) the mortgage

was current; and (c) she had made payment of arrears to Peoples Trust in January 2008 under protest and the mortgage account had not been accounted for.

[86] Peoples Trust moved for summary judgment on the mortgage claim, returnable March 9, 2009. At triage court on March 5, 2009, Ms Atas produced a doctor's note and asked for the motion to be adjourned. This request was denied without prejudice to its being renewed at the return of the summary judgment motion. At the return of the motion Ms Atas again asked for an adjournment, both on the strength of the doctor's note and on the basis that she wished to seek representation for the motion. The motion was adjourned to May 11, 2009, peremptory as regards Ms Atas.

[87] On May 11, 2009, Peoples Trust obtained summary judgment in the Peoples Trust Wycliffe Action by order of Aston J. Ms Atas did not attend the motion; instead she sent an email asking for an adjournment. Aston J. denied the adjournment on the basis of the history of delay and the lack of evidence before him to justify a further adjournment. The judgment of Aston J. was for $174,726.95: $159,473.08 for principal, $5,253.87 for interest, and $10,000 for costs. Stinson J. noted later during case management that Ms Atas "… has made several attempts to set aside or appeal the Aston judgment, without success. These included an appeal to the Court of Appeal that ultimately was dismissed for delay in December 2011."[73]

[88] In particular, on May 14, 2009, Ms Atas appeared in triage court before Strathy J. requesting a date for a motion to set aside the judgment of Aston J. on the basis that she wanted to have the PGT appointed as her litigation guardian. Strathy J. scheduled the motion for May 29, 2009 and directed Ms Atas to move promptly if she wished to involve the PGT.

[89] On May 29, 2009 the matter came on before MacDonnell J. Ms Atas asked for a further adjournment to pursue her request for litigation guardianship by the PGT. MacDonnell J. refused the adjournment:

> This matter was before the court today to hear a motion by Ms Atas to set aside the judgment granted by Justice Aston on May 11, 2009. No material has been filed in support of the motion. Ms Atas seeks an adjournment in order for her to continue her efforts to have the PGT appointed as litigation guardian. For the reasons that follow, the request for an adjournment is refused and the motion to set aside the judgment of May 11 is dismissed.
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> The motion for Summary Judgment was initially returnable on March 9, 2009. Ms Atas filed no material in response to that motion, as required by Rule 20.04(1). She appeared before Stewart J. to ask for an adjournment to May 11, 2009, but she ordered that (i) the new date was peremptory to Ms Atas; (ii) any material responding to the motion was to be filed by Ms Atas by April 12, 2009.

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[73] *Peoples Trust* v. Atas, 2012 ONSC 5407, per Stinson J., para. 3.

Ms Atas did not file any material, either before or after April 17, 2009. She also did not attend court on May 11. On May 10 she became an in-patient at CAM-H and was not discharged until sometime on May 11, 2009. She sent an email to the court on May 11, which came to the attention of Aston J., requesting a further adjournment. After considering the history of the case, the failure to file responding material, the history of delay in other matters involving the same parties, and the prejudice that would be caused to the plaintiff, Aston J. proceeded with the motion and granted summary judgment.

That same day Ms Atas applied for emergency relief in Triage Court to set the judgment aside. The motion came before Justice Strathy on May 14. Justice Strathy fixed today's date for a hearing of the motion and made an interim order staying execution of the Judgment pending disposition of the motion. He also directed, however, that Ms Atas was to file material in support of her motion by May 21, 2009, and that she move expeditiously in her effort to have a litigation guardian appointed, which Ms Atas said she wanted to do, or to retain counsel.

Ms Atas did not file any material as required by Justice Strathy's order.

She appeared today and requested an adjournment to continue her efforts to obtain a litigation guardian. There is evidence that she has taken some steps in that respect.

In my opinion, in light of the history of non-compliance with deadlines in this case, and her repeated requests to delay the matter, an adjournment shall not be granted. On March 9, having filed her material as required, she obtained an adjournment on the basis of illness and for the purpose of obtaining representation. She was granted the adjournment but failed to comply with the schedule to file responding material. She did not retain counsel on May 11. I appreciate that she was at CAM-H for part of the day on May 11 but whether she had been there or at court the fact is that she has filed nothing in response to the motion for summary judgment. Accordingly there was no responding material that could have altered the outcome of that motion.

Justice Strathy was prepared to permit Ms Atas an early appointment to set the judgment aside, but she ignored a deadline of May 21 to file material. Once again nothing was filed. When Ms Atas appeared here today, she was essentially in the same position she was 3 appearances ago, when she was before Justice Stewart, seeking an adjournment to obtain representation and not having filed anything in response to the motion for Summary Judgment. Her failure to comply with the terms of the prior adjournments, granted by both Stewart J. and Strathy J. weighs heavily against her today. Bearing in mind the factors that persuaded Aston J. to proceed on May 11, I am of the view that no further adjournment should be granted.

> No material has been filed supporting the setting aside of the judgment of Aston J. That motion is dismissed.[74]

[90] On July 28, 2009, Peoples Trust entered into an agreement of purchase and sale to sell the Wycliffe Property for a price of $185,500, with a closing date of August 26, 2009. Before Peoples Trust closed that sale, Ms Atas presented a proposed sale of the property that was for a higher price, though still insufficient to pay out the Wycliffe Mortgage. Peoples Trust agreed to discharge the Wycliffe Mortgage upon receipt of the sale proceeds from the proposed sale if the respondents agreed that Peoples Trust could continue its efforts to collect any deficiency. The respondents agreed to these terms and executed an Acknowledgment Agreement reflecting them. The respondents were represented by lawyers at this time, Michael Mitchell and Nicholas Canizares. The acknowledgment and direction signed by Ms Atas specified that:

> (a) A deficiency would result following application of the sale proceeds to the mortgage debt;
>
> (b) The deficiency due under the mortgage would remain payable under the judgment of Aston J.; and
>
> (c) Peoples Trust could collect and enforce the remaining indebtedness under the mortgage by all rights available to it under the mortgage and the judgment of Aston J.[75]

[91] The proposed sale closed on August 24, 2009. Proceeds were $177,069.22. Peoples Trust takes the position that the deficiency owing to it, after application of the sale proceeds, was $30,752.09. Ms Atas takes the position that there was no deficiency, and in fact that Peoples Trust owes her net proceeds of $2,342.27 as of closing on August 24, 2009. At Ms Atas' request, Peoples Trust obtained an appointment for November 13, 2009 to assess mortgage enforcement costs.

[92] The issue of the amount owing on the Wycliffe Mortgage was considered by D.A. Wilson J. on April 16, 2010 on a motion by Ms Atas to set aside a Notice of Garnishment issued by People's Trust to Sutton Group Realty Systems, a realtor at which Ms Atas allegedly worked or was affiliated (Ms Atas subsequently sued Sutton Group in connection with the garnishments and other matters). D.A. Wilson J. wrote as follows:

> [8] A review of the facts of this case makes it clear that the mortgage on the Hamilton property went into default and the Plaintiff brought a motion for Summary Judgment, as it was entitled to do. The Defendant did not appear at the

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[74] *Peoples Trust* v. *Atas* (Peoples Trust Wycliffe Mortgage Action), handwritten endorsement of McDonnell J. dated May 29, 2009 (unreported).
[75] *Peoples Trust* v. *Atas*, 2012 ONSC 5407, per Stinson J., para. 4.

motion and judgment was granted by Justice Aston on May 11, 2009. That Judgment has not been appealed from, varied nor stayed.

[9] It seems that Ms Atas disputes how the funds from the sale of the property were applied to the outstanding arrears but she acknowledges that she owes monies, but disputes that the figure is $40,176.50 which is the amount contained in the more recent Notice of Garnishment issued February 3, 2010.[76] The standard terms of the mortgage and section 27 of the *Mortgages Act* allow a mortgagee to include interest and costs in its calculations of the amounts owing.

[10] The material before me, specifically the affidavit of Matthew Cameron, sets out the Plaintiff's calculations of the amounts owing under the Judgment and how the outstanding figure was arrived at. It appears Ms Atas has failed to take into account the additional interest that has accrued.

[11] Rule 60.08 of the *Rules of Civil Procedure* permits a creditor to enforce a Judgment by garnishment and there is nothing in the material before me to support the contention that the garnishment is somehow improper. Indeed, it appears that the procedure set out in Rule 60.08(4) of the *Rules* was followed. Ms Atas admits that she owes money, she disputes the quantum. Furthermore, there is an outstanding judgment against her and no steps have been taken to vary it or set it aside.

[12] While the Court has inherent jurisdiction to set aside a Notice of Garnishment if it appears equitable to do so, there is no factual basis in the case before me to support such an action. No monies have been paid by either garnishee to the Plaintiff and there is no evidence that the garnishments would have an inordinately harsh effect upon Ms Atas. This submission was not made by the Defendant.

[13] It is only recently, after the motion materials were served and filed, that the Defendant obtained the appointment for the assessment of the mortgagee's costs. The discharge statement which was provided to Ms Atas' counsel at the time in August of 2009 set out the costs incurred by the Plaintiff in connection with the enforcement of the mortgage. The quantum of costs has undoubtedly increased since that time. There is now an assessment of the costs set for August 10, 2010. The solicitor for the Plaintiff will obviously have to produce the documentation upon which it relies in order to justify the account prior to the assessment date. As I noted above, the Defendant did not make any submissions concerning the need for a trial of the costs issue. In any event, section 43(2) of the *Mortgages*

[76] In the s.140 application, Ms Atas seems to have resiled from this position and now claims that Peoples Trust owes her money.

> *Act* sets out the procedure for the assessment of costs and it is to be done by an assessment officer, not through the trial process.
>
> **Conclusion**
>
> [14] The Defendant's motion to set aside the Notice of Garnishment of August 19, 2009 is dismissed. The solicitor for the Plaintiff shall deliver to the Defendant the materials upon which it relies for the assessment of its costs 10 days prior to the date of the assessment. The Defendant's motion for a trial of the issue of the costs of the mortgagee is dismissed.[77]

Based on these findings, as of the appearance before D.A. Wilson J., there was acknowledged to be a balance owing from Ms Atas to Peoples Trust under the Wycliffe Mortgage, but there was a dispute about what that balance was. It appears that this dispute focused principally on mortgage enforcement costs and interest accruals claimed by Peoples Trust.

[93] By endorsement released May 21, 2010, D.A. Wilson J. awarded costs of $4,000, to Peoples Trust by Ms Atas, payable from the funds held in trust by Peoples Trust's lawyers to secure Peoples Trust's mortgage enforcement costs. In her costs endorsement, D.A. Wilson J. found:

> The Plaintiff has had Judgment for more than a year which Judgment was not appealed or varied. Ms Atas conceded she owes the Plaintiff money but disputes the quantum. I agree the actions of the Defendant [Ms Atas] have unnecessarily prolonged the proceedings and have resulted in additional costs.[78]

In the context of the costs submissions, Ms Atas wrote to D.A. Wilson J., enclosing a doctor's note dated May 10, 2010, indicating that she had been referred for a mental health assessment, and asking D.A. Wilson J. to reconsider the underlying decision. D.A. Wilson J. declined to do so and noted:

> … at no time did Ms Atas advise me that she has a disability or that she was not able to represent herself. To the contrary, she was articulate and most capable of presenting argument on her own behalf.

[94] On June 10, 2010, Ms Atas served a notice of appeal of the decision of D.A. Wilson J. to the Court of Appeal. On October 21, 2010, she moved for an extension of time to perfect the appeal and for appointment of the PGT as her litigation guardian. At Ms Atas' request this motion was adjourned to September 1, 2011, and thence to October 17, 2011. On October 17,

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[77] *Peoples Trust Company* v. *Atas*, 2010 ONSC 2403 (CanLII), per D.A. Wilson J., paras. 8-14.
[78] *Peoples Trust* v. *Atas* (Peoples Trust Wycliffe Mortgage Action), handwritten costs endorsement of D.A. Wilson J. (unreported).

2011, Ms Atas abandoned her request for appointment of the PGT (taking the position that it was no longer needed). Cronk J.A. concluded that PGT involvement was not required and gave Ms Atas a further chance to perfect her appeal by November 30, 2011. On December 14, 2011, Ms Atas brought a further motion to extend the time to perfect her appeal; this request was denied by Rosenberg J.A. on December 14, 2011, who also adjourned Peoples Trust's cross-motion to dismiss for delay to the Registrar. Rosenberg J.A.'s endorsement includes the following paragraph:

> In light of this endorsement [of Cronk J.A.], the appellants had to know that any further extension of time would be granted only in exceptional circumstances. At the very least, the appellants would have to have demonstrated serious and sustained efforts to attempt to perfect the appeal. Instead Ms Atas has done almost nothing. She has written the court reporters inquiring about transcripts, consulted an out-of-province lawyer at some unspecified time and prepared a short amended notice of appeal. The appellants have not ordered any transcripts, not prepared a draft factum, or an appeal book and compendium. These appeals are no closer to perfection today than they were on October 21, 2011, despite the passage of almost seven weeks.[79]

The appeal was finally dismissed for delay by the Registrar on December 22, 2011.[80] Ms Atas continues to complain in the s.140 application that the judgment of Aston J. ought to be set aside. This issue has been decided and all appeals have been exhausted. D.A. Wilson J. refused to intervene in Peoples Trust's enforcement efforts. Ms Atas' appeal of that decision has been dismissed. All that remains is the assessment of mortgage enforcement costs. Ms Atas' stated intention to continue to challenge the judgment of Aston J. is a vexatious refusal to accept a final judicial decision.

[95] As for Peoples Trust enforcement costs, on April 5, 2010, Ms Atas served a notice of assessment returnable August 3, 2010. At Ms Atas' request this hearing was adjourned to December 22 and 23, 2010. On December 20, Ms Atas requested a further adjournment, which was granted indefinitely. Subsequently, preliminary appointments were held before A.O. Ittleman on February 13, 2012 and March 12, 2012, at which time the assessment was adjourned to August 16 and 17, 2012, peremptory. The assessment was stayed by Stinson J. pending decision on the question of Ms Atas' capacity (described below), and then was further stayed pending decision on this s.140 application.

[96] In an endorsement on September 25, 2012, Stinson J. summarized Peoples Trust's position on the balance owing as follows:

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[79] *Peoples Trust* v. *Atas*, handwritten endorsement of Rosenberg J.A. dated December 14, 2011, Affidavit of Cristine Perri sworn September 23, 2014, Exhibit "56".
[80] Affidavit of Cristine Perri sworn September 23, 2014, Exhibit "57".

> At the time the property was sold, Peoples calculated the balance owing on the mortgage at $30,725.09. This amount was calculated after deducting legal expenses incurred to that time of $34,207.58. Since that time, taking into account the interest that has accrued, and other legal expenses incurred by it, and netting out awards of costs made in its favour by various judges, Peoples calculates the amount due to it as at August 7, 2012 at $100,546.25.[81]

Despite her acknowledgment before D.A. Wilson J. that there was a balance owing, and despite her signed Acknowledgment to the contrary, Ms Atas continues to take the position in the s.140 application that there was no balance owing and that Peoples Trust owed her money from the proceeds of sale. Despite Stinson J.'s comment that Peoples Trust has provided considerable explanation of its enforcement costs and interest calculations, Ms Atas continues to take the position that Peoples Trust has somehow been dishonest in its handling of this issue.

(b) <u>The St George Street Property</u>

[97] In December 2006, the Peoples Trust St George Street Mortgage matured and was continued on a month-to-month basis. Apparently the mortgage went into arrears in June 2007 and October 2007, leading to demands for payments of arrears. Both times Peoples Trust commenced enforcement proceedings, and both times those proceedings were discontinued when the arrears were paid. On March 14, 2008, Peoples Trust demanded full repayment and advised that the mortgage would not be renewed or extended further.

[98] On April 16, 2008, Peoples Trust sued the respondents (**08-CV-352871**) for payment of the mortgage and for possession of the St George Street Property (the "Peoples Trust St George Mortgage Action"). On May 8, 2008, Peoples Trust issued a notice of sale under mortgage providing until June 16, 2008 for redemption. On May 14, 2008, the respondents served a notice of intent to defend; on July 4, 2008, they served a statement of defence in which they denied signing the mortgage, denied the mortgage was in default, and alleged that the mortgage was extended or renewed.

[99] Peoples Trust scheduled a motion for summary judgment for October 9, 2008. At the respondents' request this was adjourned to December 5, 2008. On December 5, the respondents' lawyers removed themselves from the record and the motion was adjourned again to February 26, 2009, to permit the respondents to obtain new counsel. The motion was adjourned again at the respondents' request to March 10, 2009. On March 10, 2009, Peoples Trust obtained summary judgment in the Peoples Trust St George Mortgage Action from Lederer J. in the amount of $565,571.25 plus $9,900 for costs. Ms Atas wrote a letter to Lederer J. on March 16,

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[81] *Peoples Trust* v. *Atas*, 2012 ONSC 5407, per Stinson J., para. 8.

2009, alleging that the judgment was obtained by a false affidavit and asking him to reconsider his decision. Lederer J. declined to intervene.[82]

[100] The respondents then brought a motion to set aside the summary judgment on April 27, 2009 on the basis of the alleged false affidavit. On the return date of the motion, Ms Atas called herself an ambulance and the court adjourned the motion to May 22, 2009. On May 22, Ms Atas requested another adjournment of the motion. Aston J. refused the request, dismissed the motion to set aside the order for summary judgment, granted Peoples Trust an order for possession of the property, and awarded $8,000 in costs against the respondents in favour of Peoples Trust.[83] Ms Atas continues to take the position in the s.140 application that the judgment of Lederer J. should be set aside because it was obtained on the basis of a "false affidavit".

[101] On June 11, 2009, the Sheriff evicted Ms Atas from her unit at the St George Street Property pursuant to the order for possession.

[102] The respondents launched appeals to the Court of Appeal. Ms Atas again failed to perfect the appeals. She was given "one last chance"[84] by Cronk J.A. on October 17, 2011. She failed to perfect the appeals and they were dismissed on December 22, 2011 and February 10, 2012, with costs against the respondents aggregating $1500.

[103] The judgment in the St George Street Mortgage Action was never enforced because the sale proceeds of the St George Street Property were sufficient to pay out the Peoples Trust first mortgage. In this regard:

(a) Peoples Trust obtained an offer to purchase the St George Property for $788,000. However, the respondents sold the property for $800,000 to Krishnan and Nutal Chahal. That sale closed on June 30, 2009, and the respondents paid $677,351.51 to Peoples Trust, being the balance owing on the first mortgage, including claimed mortgage enforcement costs of $91,280.09. The parties agreed that this amount would be held in trust by Peoples Trust's lawyers, Dale & Lessman LLP, until the mortgage enforcement costs were assessed or a court order was made in respect to them. Subsequently, notwithstanding her agreement to the contrary, Ms Atas has taken the position in the s.140 application that this money should all be paid to her forthwith, before the mortgage enforcement costs are assessed.

(b) The respondents contest the amount owing on the Peoples Trust first mortgage. They say that the judgment of Lederer J. terminated the mortgage, so that Peoples

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[82] Letter from Ms Atas to Lederer J. dated March 16, 2009, supplementary affidavit of Cristine Perri sworn May 13, 2015, para. 18 and Exhibit "7".

[83] Ms Atas continues to return to this issue, which is now moot. The property was sold, not by Peoples Trust but by Ms Atas, and the only issue that remains is the balance owed for mortgage enforcement costs.

[84] *Peoples Trust* v. *Respondents*; *Peoples Trust* v. *Atas*, Endorsement of Cronk J.A. dated October 17, 2011, para. 12 (unreported).

Trust is limited to recovery of the judgment. Peoples Trust relies on the mortgage for its position that interest continued to accrue at the mortgage rate after the date of the judgment and that it is entitled to its actually incurred reasonable enforcement costs throughout. The respondents deny Peoples Trust's claims for the costs of a property manager while Peoples Trust was in possession, and seeks payment of rents attorned by Peoples Trust from the respondents' tenants. The respondents also continue to claim that the judgment of Lederer J. was obtained by fraud even though their motion to set aside the judgment was dismissed and their appeal of the judgment was also dismissed. The respondents' continued position challenging the judgment of Lederer J. is another example of their refusal to accept the authority of a final judicial decision.

(c) On June 2, 2009, Peoples Trust removed Ms Atas' personalty from common areas of the St George Street Property. Peoples Trust takes the position that Ms Atas assumed the lease for the storage facility in which this property was stored as of September 1, 2009. Although Peoples Trust gave notice of its intention to remove Ms Atas' property from her own unit at the property if she did not do so before June 29, 2009, Ms Atas did not do so. On the record before me it is not clear whether Peoples Trust removed any of this personalty. It is clear that Ms Atas remained in her unit at the St George Street Property until August 2009. The Chahals gave notice to Ms Atas to remove her belongings by August 4, 2009, which apparently she did not do.

(d) On August 9, 2009, Ms Atas applied to the Landlord and Tenant Board ("LTB") to keep possession of the unit in the St George Street Property in which she resided after sale of the property to the Chahals. She also claimed that the Chahals had entered her unit illegally. The LTB dismissed Ms Atas' application and decided that (a) the Chahals and Ms Atas had agreed that Ms Atas would not remain in the property after the purchase by the Chahals; (b) that Ms Atas would be able to stay until August 4, 2009, but would then give up vacant possession of her unit to the Chahals; and (c) Ms Atas would be liable to heavy penalties if she failed to turn over vacant possession as agreed. On August 13, 2009, the LTB ordered the Chahals to provide Ms Atas with access to her former unit on August 15, 2009, between 9 and 11 am, to remove her possessions. Ms Atas ignored the order of the LTB and on August 19, 2009 commenced a claim against the Chahals in Small Claims Court (**09-SC-88711**), alleging that the Chahals had breached the Agreement of Purchase and Sale by failing to permit her to continue to occupy her unit in the St George Street Property. There is no such provision on the face of the Agreement of Purchase and Sale. Subsequently Ms Atas sued the Chahals in Superior Court (**11-CV-429151**) for $2.5 million. The claim is based on (a) the Chahals allegedly purchasing the property for less than market value; (b) the Chahals failing to honour a commitment to permit her to stay in the premises after closing; and (c) a claim respecting Ms Atas' personalty removed from the premises. The first two heads of claim appear to lack any substance and the second ground is premised on the decision of the Landlord Tenant Board being in

error, a vexatious refusal to accept the authority of that decision. In respect to the personalty claim, the Chahals have pleaded that, despite numerous requests that she remove her property, Ms Atas did not do so. The Chahals plead that they removed the property on December 15, 2009 and have kept the property in storage, at a cost of $282 per month, ever since. They plead that Ms Atas has continued to refuse to take possession of the property. Further, the claim is premised on the decision of the Landlord and Tenant Board being in error, a vexatious refusal to accept the authority of that decision.

(e) On May 19, 2010, Peoples Trust's mortgage enforcement costs were assessed in connection with the St George Property. The Certificate of Assessment was issued on August 29, 2011 fixing the costs then at $86,721.68. The assessment of Peoples Trust's costs was set aside because Stinson J. found that Ms Atas' capacity was in doubt at the time that it took place. Stinson J. directed in June 2012 that the matter "be remitted to a different Assessment Officer for a further hearing." That has not yet taken place because of the stay ordered by Stinson J. pending decision of the issue of capacity, and then the stay pending decision on this s.140 application.

[104] Stinson J. summarized the state of these issues in an endorsement dated September 25, 2012 as follows:

> Before it obtained judgment… Peoples [Trust]… served a notice of attornment of rents upon the tenants of the property. Peoples [Trust] collected rents totaled $18,250 from the tenants between March and June 2009…. Peoples [Trust] permitted its property management to apply the rent revenues to the operating expenses incurred once it took possession of the property.
>
> … The mortgage was fully paid, but the defendants requested that the plaintiff mortgagee's costs be assessed. The parties therefore agreed that Peoples [Trust's] claimed costs in the sum of $91,280.09 would be held in the trust account of Peoples [Trust's] lawyer until an agreement could be reached in relation to costs, or until an assessment of costs had been completed.
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> …
>
> According to the material filed by her in the motion she served…, Ms Atas asserts that she has not received proper credit for the rents that were attorned and that there has never been any proper accounting for the proceeds of sale….
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> … [T]he detailed affidavit material filed by Peoples in response to this motion provides considerable insight into the receipts and disbursements of Peoples and its property manager in relation to this property. With that information in hand, it should be possible for Ms Atas to determine once and for all whether this motion is necessary and, if so, for her to prepare properly focused material, supported by

> a factum and legal authorities that would warrant the court re-allocating the proceeds of sale and/or the attornment of rents.[85]

Stinson J. adjourned Ms Atas' motion with costs payable to Peoples Trust of $16,000.[86] In so ordering, Stinson J. held:

> I am aware that the amounts sought by Peoples are significant. At the same time, I am aware that these expenses have been incurred by a mortgagee that has, on the face of the proceedings, acted appropriately to enforce its rights and pursue its remedies. So far at least, Ms Atas has not succeeded in persuading the court that anything done by Peoples was improper. To that extent, Peoples has enjoyed complete success. Much of the efforts incurred by Peoples have proved unnecessary.[87]

[105] It also appears that there was a second mortgage on the St George Street Property at the time the property was sold to the Chahals in June 2009: a $70,000 mortgage to Jane Louise Hilson. There were legal proceedings in respect to this mortgage (**07-CV-341210** and **08-CV-359261**) but the history of that litigation does not appear to be in the record before me. Ms Hilson is not an applicant. Apparently $93,495.88 was paid to Ms Hilson to discharge this mortgage on closing of sale of the St George Street Property.

[106] Ms Atas has raised the issue of attorned rents from time to time. She has alleged that these attorned rents were not properly accounted for and have somehow "disappeared". On the record this does not appear to be true. Peoples Trust attorned rents at the St George Street Property for six months (March 1 to June 30, 2009). Total rents received for this period for three units were $18,250 (the fourth unit was occupied by Ms Atas and she did not pay rent). These rents were applied by the property manager against property management and maintenance expenses. Discharge statements provided to Ms Atas' lawyers on June 16 and June 25, 2009, show and account for these attorned rents. There does not appear to be any basis to suggest that the attorned rents have been handled improperly or not accounted for or that they have "disappeared". In any event, any issue respecting the mortgage accounting for the St George Street Mortgage will be addressed in the assessment of mortgage enforcement costs.[88]

E. <u>The Fourth Round of Proceedings: More Actions Against Lawyers</u>

[107] The respondents sued Michael Kimberly and his wife (who was also a lawyer) and their law firm (**09-CV-391695**). The claims are substantially identical to the claims asserted against

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[85] *Peoples Trust* v. *Atas*, 2012 ONSC 5407, per Stinson J., paras. 24-28.
[86] *Peoples Trust* v. *Atas*, 2012 ONSC 5407, per Stinson J., para. 38. This amount included $10,000 respecting the Wycliffe Property proceedings and $6,000 for the St George Street proceedings.
[87] *Peoples Trust* v. *Atas*, 2012 ONSC 5407, per Stinson J., para. 37.
[88] For example, the mortgage discharge statements showing the attorned rents are Exhibit 110 to the Affidavit of Cristine Perri sworn September 23, 2014.

other lawyers: an alleged failure to obtain detailed discharge statements, alleged failure to advise that there would be second and third mortgages, alleged failure to obtain an accounting of lenders' fees. The respondents claimed damages of $1 million in the Kimberly Action. To the extent that this action is not a collateral attack on the judgment of Lederer J., it is misconceived: any issue about accounting for attorned rents or the precise balance owing on the mortgage turns on the assessment of mortgage enforcement costs, which has yet to be done. The quantum of the claim is itself vexatious, being many times the value of any conceivable claim the respondents could have.

[108] The respondents sued the lawyers that had acted for them in connection with resolution of the Peoples Trust power of sale of the Wycliffe Property, Michael John Mitchell and Nicholas Canizares (**10-CV-411421**). Apparently these lawyers were retained on June 23, 2009 to close this sale on or before June 30, 2009 (the date on which Peoples Trust was going to close its sale of the property if Ms Atas did not close her proposed sale to the Chahals beforehand). Ms Atas alleges that there were many things wrong with this closing, all of which would appear to be obviated by her signature on the closing documents. Ms Atas claims that these solicitors were on notice of her mental illness and that they failed to look out for Ms Atas' interests in not reserving her rights to dispute amounts paid on closing. It is hard to see how these claims could possibly have substance: if Ms Atas had not closed the sale with the Chahals, then Peoples Trust would have sold the property for less money under its power of sale. The brief period of the solicitors' engagement renders it impractical that Ms Atas instructed them to verify independently the accounts between Ms Atas and her creditors. And if these solicitors had been put on notice that Ms Atas might not be legally capable, it is highly unlikely that they would have accepted the retainer or proceeded. In any event, it is difficult to see how anything done, or not done, by these solicitors could have adversely affected Ms Atas' position, given that she had signed a binding agreement of purchase and sale with the Chahals, she had to give good title to the property to the Chahals, and she would have lost the property through power of sale if the sale to the Chahals did not close. Further, the respondents claim the absurd quantum of $2.5 million in damages, an amount that appears to be roughly one hundredfold any reasonable claim that could have been made for failing to protect Ms Atas' claims against her creditors. The action, on its face, appears to be without substance and is vexatious.

[109] Also on September 29, 2010, Ms Atas sued David Bresver and his law firm (**10-CV-411424**). Mr Bresver had acted for Peoples Trust on the mortgage refinancing of the St George Street Property. Ms Atas was separately represented on the mortgage transaction by Taras Kulish. However the respondents closed the mortgage transaction without a solicitor and apparently signed a waiver of independent legal advice in which they acknowledged that Mr Bresver was acting solely for Peoples Trust. Subsequently in the litigation, a document surfaced in which Mr Bresver apparently attested to having provided independent legal advice to Ms

Atas.[89] It seems undisputed that Bresver did not do this. In his statement of defence Bresver pleads that "[a]ny isolated reference in a document to Bresver acting as the plaintiffs' lawyer was merely an inadvertent drafting error, that was immaterial, and that was not relied upon by any of the parties to the transaction, including the plaintiffs."[90] To the extent that this action is not a collateral attack on the judgment of Lederer J., it appears to lack any *bona fide* basis.

[110] On March 8, 2010, Ms Atas made a complaint to the LSUC about Mr Brooker. The LSUC took no action against Mr Brooker as a result of this complaint.

[111] On March 10, 2010, David Brooker sued Ms Atas in Small Claims Court to collect his legal fees (**10-SC-99076**).

F. Fifth Round of Proceedings: First Defamation Action

[112] Between March 17 and 29, 2010, Ms Atas posted defamatory statements on the internet about Mr Stancer and Mr Hatcher (among others). Ms Atas stated in these postings (among other things) that Messrs Stancer and Hatcher should be disbarred and were guilty of mortgage fraud. On March 29, 2010, Stancer Gossin Rose LLP sued Ms Atas for damages and for an injunction in connection with these statements (**10-CV-400035)** (the "First Defamation Action").

[113] On April 9, 2010, Matlow J. granted an interim injunction restraining Ms Atas from making, publishing or causing to be published "any statements of any kind relating to Stancer Gossin Rose LLP or any of its partners, associates or employees". On April 29, 2010, this order was continued on an interim basis by Newbould J. On May 12, 2010, this order was extended on an interlocutory basis by Strathy J. (as he then was) until "disposition of the Trial". The case has not yet gone to trial, and the interlocutory order is still in force (the "2010 Defamation Injunction").

[114] In her evidence Ms Atas implies that she still intends to defend this proceeding on the merits:

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[89] Ms Atas has repeatedly taken the position that Sharon Small, an employee of Peoples Trust, swore in an affidavit that Mr Bresver provided independent legal advice to Ms Atas. This is apparent from reading Ms Small's affidavits: supplementary affidavit of Cristine Terri sworn May 13, 2015, Exhibit "8", and Affidavit of Nadire Atas sworn March 2, 2015, Exhibit "I".

[90] Statement of Defence in 10-CV-411424, para. 17. A document indicating that Mr Bresver had provided independent legal advice to the respondents was relied upon by Peoples Trust in one court appearance. That reliance would have made no difference to the outcome of any step in the proceeding; if the court had instead been provided with the respondents' waiver of ILA, the result would have been the same. Nonetheless, it appears that an inadvertent error was made in a document, and that Peoples Trust did rely on that inadvertent error, presumably inadvertently (since it would have had nothing to gain by substituting the ILA certificate for the waiver). Ms Atas knows that she never retained Bresver for the Peoples Trust mortgage transaction, but has nonetheless taken the position that Bresver did act for her and acted in conflict of interest, to her detriment. It is difficult to see how this position could possibly be taken in good faith.

> I did not post on-line defamatory statements about Mr Sloan, Mr Brooker, Mr Shastri and Mr Stancer and there has been no finding by a court that I engaged in such conduct. In May 2010, Stancer Gossin Rose brought a claim against me…. This motion was adjourned due to the issue of disability. On May 12, 2010, Justice Strathy made an Order that "she [Ms Atas] will be at liberty to present her evidence either at Trial or on proper Motion materials." There has not been a final determination by the court on this action."[91]

[115] Ms Atas' evidence fails to tell a rather important part of the story. An interim injunction was granted by Matlow J. on the basis that the plaintiffs had shown a strong *prima facie* case. Strathy J. (as he then was) directed that Ms Atas could move to set aside the order "on proper motion materials" in 2010; to date she has not done so. Strathy J. did not adjourn the motion "due to the issue of disability" or at all.

G. Sixth Round of Proceedings: Ms Atas' Mental Illness

[116] Ms Atas suffers, or has suffered, from mental illness, what she describes as "very severe stress-related depression".[92] She says that she was suffering from it periodically as early as 2007. The illness deepened and in May 2009 she was confined overnight at CAMH. She stated in cross-examinations that this illness was at its worst in 2010.[93] She denied that the refinancing of her property in 2003 was a triggering event:

> Actually, it wasn't, no. I don't… I mean, no. I am a realtor. I deal with financing all the time. It was the stress of the '04 litigation and the… everything that was going on with the '04 litigation [the Gomes/Kelly Mortgage Action].[94]

[117] In a letter dated November 28, 2008, Dr J.T. Hurdalek writes that Ms Atas had been under his medical care and "has been seriously ill and significantly disabled by her illness… to such a degree of severity that she is not able effectively participate (sic) in legal proceedings she has been involved in." Dr Hurdalek wrote that he expected to see some improvement in 2-3 months' time. In a follow-up note dated February 21, 2009, Dr Hurdalek wrote: "… Ms Atas has continued to be severely ill and there has not been any significant improvement. It is still my opinion that the illness has significantly affected her functioning including her ability to participate in forthcoming legal proceedings and giving instruction effectively (sic)." Notably, in these letters the doctor does not describe the nature of Ms Atas' illness, the nature of the impairments that arise from that illness, her treatment, her prognosis, or even her diagnosis. The letters are conclusory.

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[91] Further supplementary affidavit of Nadire Atas sworn May 15, 2015, para. 48.
[92] Cross-examination of Nadire Atas, June 3, 2015, p.37, Q.165.
[93] Cross-examination of Nadire Atas, June 3, 2015, pp.126-128, QQ.660-683., pp 125-127.
[94] Cross-examination of Nadire Atas, June 3, 2015, p.41, Q.182.

[118] It is a matter of judgment as to how much detail and analysis is required in a doctor's note – the notes provided by Ms Atas might suffice to excuse a day's absence. To explain an inability to participate in legal proceedings for months or to "give instructions effectively", the notes are inadequate. Litigation is, itself, stressful for many people, and it often arises when people are already under considerable stress: serious injury, death of a loved one, loss of employment, or financial catastrophe. The courts understand this and make allowances. But the stress of misfortune and conflict is not sufficient to delay process for months or years on the basis of conclusory notes from a doctor.

[119] On April 8, 2010, Ms Atas asked Deputy Judge Ashby of the Small Claims Court to appoint the PGT as her litigation guardian. Ashby D.J.'s endorsement from that day reads:

> The defendant has issued numerous motions in this action, the last of these being to have this court appoint a litigation guardian on the basis that she is under a disability. The evidence provided to support this motion falls far short of persuading me that she is under a disability. She has provided past medical notes and records but nothing current. There is also no evidence that there is no one to act on her behalf other than the Public Guardian and Trustee. A representative of the PGT did appear and took no position but did make helpful submissions. The motion is dismissed and the defendant is prohibited from bringing further motions without leave of the court. A copy of this endorsement should be mailed to the parties and the PGT.[95]

[120] On May 14, 2010, Ms Atas appeared before Himel J. seeking to adjourn an assessment of Peoples Trust's costs scheduled for May 18 and 19, 2010. The assessment had been ordered peremptory as against Ms Atas by D.A. Wilson J. Himel J. noted that ""the defendant asks for an adjournment as she says she is not well and has medical appointments." No evidence was placed before Himel J. to confirm Ms Atas' claim that she was too unwell to proceed as ordered by D.A. Wilson J. Himel J. found that "there is no basis to interfere with Justice Wilson's order that the assessment set for May 18 and 19 is to proceed."

[121] The assessment proceeded. Its history is summarized in a subsequent endorsement from Stinson J.:

> The Assessment Officer [Feldson] conducted an assessment hearing on May 18 and 19 2010. She released reasons dated June 20, 2011, followed by an Addendum dated August 25, 2011 and a Second Addendum dated August 29, 2011, prior to issuing her Certificate of Assessment.
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> …

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[95] *Wells Fargo Financial Corporation* v. *Atas* (07-SC-56986), per Ashby D.J. (unreported).

> … [O]n May 18, 2010, Ms Atas attended [the Assessment Hearing]…. Ms Atas then fell ill and was taken to hospital by paramedics. She was well enough to be released later that day.
>
> The next morning, May 19, 2010, the assessment hearing (which had been adjourned due to Ms Atas' illness) resumed. Although the Assessment Officer saw Ms Atas before the hearing resumed, when it did recommence, Ms Atas was not present. She had advised the Assessment Office that she was not well, and that she was going back to the hospital.[96]

[122] At the appearance before Himel J. on May 14, 2010, there was no apparent basis to argue that Ms Atas was incapable by reason of mental illness. On April 16, 2010, D.A. Wilson J. heard argument from Ms Atas in another proceeding and D.A. Wilson J. found that she was "articulate and most capable of presenting argument". Himel J. apparently had no concerns about Ms Atas' capacity when she heard Ms Atas' adjournment request on May 14, 2010.

[123] On the other hand, other jurists raised concerns about Ms Atas' fitness in other proceedings. On April 27, 2010, Master Muir declined to proceed with a motion in various lawsuits due to concerns regarding Ms Atas' mental health and legal capacity. In **10-CV-400035** (*Stancer Gossin* v. *Atas*), on April 29, 2010, Newbould J. declined to proceed and directed that notice be given to the PGT. On May 12, 2010, in an appearance in the same case, Strathy J. (as he then was) noted Ms Atas' concerns about her own capacity and he was provided material from CAMH by Ms Atas. The endorsements of Master Muir and of Newbould and Strathy JJ. were not provided to Himel J.

[124] Ms Atas commissioned an Assessment Report respecting her capacity on June 22, 2010. The Report was completed and signed on July 12, 2010. The Report found Ms Atas to be a person under an incapacitating disability.

[125] On July 19, 2010, defendants in three of the actions commenced by Ms Atas moved to have the actions against them dismissed. Ms Atas responded to these motions by filing a copy of the Capacity Assessment Report, and asking Master Muir to find that she was a person under a disability and to appoint the PGT on her behalf. Master Muir found that Ms Atas was a person under a disability and appointed the PGT as her litigation guardian in respect to the five actions that were before him on that day. Master Muir also ordered that these cases would thenceforth be case managed by him.

[126] In a subsequent endorsement, Master Muir summarized the events leading up to his order appointing the PGT as litigation trustee for Ms Atas:

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[96] *Peoples Trust* v. *Atas*, per Stinson J. (April 2, 2012).

These matters first came before me April 27, 2010. On that date, a number of motions were brought by several of the defendants to these actions. Those motions sought orders dismissing the actions brought by Ms Atas and her corporation as a result of the plaintiffs' breach of court orders, their failure to pay costs orders and their failure to comply with various provisions of the *Rules of Civil Procedure*…. On that date, Ms Atas appeared in person along with Matthew Cohen as her agent. Mr Cohen appeared as *pro bono* duty counsel through Law Help Ontario solely for the purpose of seeking an adjournment of the motions before me on that date.

On that date, Mr Cohen submitted that adjournments should be granted as there was a basis for a concern that Ms Atas was potentially a party under a disability. Mr Cohen provided the court with a letter indicating that Ms Atas had been treated at the Centre for Addiction and Mental Health on April 22, 2010 and that she was about to undergo a mental health assessment in relation to certain criminal charges she was facing at the time.

In my endorsement of April 27, 2010 I noted that Ms Atas had been engaged in extensive litigation against many of her former lawyers and that those actions were notable for Ms Atas' chronic failure to comply with the Rules and orders of this court. I also noted that at least two judges of this court had found Ms Atas' actions to be an abuse of process.

Nevertheless, given the concerns about Ms Atas' capacity, I adjourned those motions to July 19, 2010 in order to allow Ms Atas an opportunity to respond to the motions and to place evidence of her capacity before the court. I also ordered that a copy of my endorsement from that date be provided to the PGT.

On July 19, 2010, Ms Atas appeared in person along with counsel for the PGT. I was advised that Ms Atas had attended a capacity assessment on June 22, 2010 with Elizabeth-Saveta Milojevic. Ms Milojevic prepared a capacity report dated July 12, 2010 in which she concluded that Ms Atas was not capable of representing herself in legal proceedings. Counsel for the PGT advised the court that the PGT was prepared to act as Ms Atas' litigation guardian in connection with these proceedings.

As a result, on July 23, 2010 I made a finding that Ms Atas lacked the capacity to represent herself in these proceedings and was a party under disability as defined by Rule 1.03. I also made an order that all of these actions be case managed by

me pursuant to Rule 77. I then adjourned the motions to November 1, 2010 in order to allow the PGT to familiarize itself with these proceedings.[97]

[127] Notwithstanding that Ms Atas was declared incapable and in need of a litigation guardian in respect to the proceedings before Master Muir, no litigation guardian was appointed for Ms Atas in respect to the many other proceedings in which she was involved. And notwithstanding that Ms Atas herself had sought the finding of incapacity that was granted in July 2010, she commenced three actions without a litigation guardian on September 29, 2010:

(a) *Atas v. Peoples Trust Co*. (**10-CV-411415**), in which she claimed $2.5 million from Peoples Trust in connection with mortgage enforcement. Among other things Ms Atas claims for improvident realization, a claim that seems bound to fail given that she sold the property herself.

(b) The action against Messrs Mitchell and Canizares (**10-CV-411421**) described above;[98] and

(c) The action against Mr Bresver (**10-CV-411424**) described above.[99]

Evidently Ms Atas felt well enough to commence proceedings on her own but not to defend motions for summary judgment.

[128] The PGT reviewed the merits of the actions in respect to which it had been appointed litigation guardian for Ms Atas. On her behalf, subject to court approval, the PGT settled those actions on the basis that they be dismissed without costs. These offers were accepted. On October 27, 2010, the PGT advised Ms Atas of the settlement, which was still subject to court approval.[100]

[129] On November 1, 2010, Ms Atas advised that she was no longer under a disability and that she would move for an order removing the PGT as her litigation guardian. Defendants in the affected actions took the position that Ms Atas should be required to undergo a psychiatric

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[97] Endorsement of Master Muir dated December 19, 2011, paras. 5-10 (unreported).
[98] See para. 108 above.
[99] See para. 109 above.
[100] Ms Atas denies that there was such a settlement or that she was advised of it: further supplementary affidavit of Nadire Atas sworn May 15, 2015, para. 57. This denial is not credible. In her Recusal Memorandum, Record, p.646, quoted below at para. 158 (fifth point), she acknowledges having been told the terms of the settlement by the PGT. In an affidavit sworn July 15, 2011, she deposed that "[t]he settlements are extremely favourable to the defendants" (affidavit of Nadire Atas sworn July 15, 2011, para. 23). She goes on in the same paragraph to argue that "[o]pposing counsel are motivated to pursue a finding of incapacity in order to move for a settlement motion". I am satisfied that Ms Atas pursued her position that she was no longer incapable at least in part because she disagreed with the PGT's proposed settlement and wished to recover control of her litigation to avoid the settlement. In this she succeeded; these settlements were never implemented. I am also satisfied that Ms Atas denies past events when she sees advantage in so doing.

assessment in connection with the motion to remove the PGT. Ms Atas opposed this order. Master Muir granted the order for this capacity assessment on December 19, 2011.

[130] Master Muir's endorsement of December 19, 2011, summarizes the steps taken from the time the Master appointed the PGT as Ms Atas' litigation guardian as follows:[101]

> On November 1, 2010, the parties appeared before me once again and I was advised…
>
> (a) That the PGT had reviewed the various matters in respect of which it had been appointed and had met with counsel for all defendants;
>
> (b) That the various defendants had made offers to settle those actions which were accepted by the PGT, subject to court approval;
>
> (c) That Ms Atas believed that she was no longer a person under disability and was capable of instructing counsel and making decisions for herself in respect of these actions; and,
>
> (d) That Ms Atas wished to bring a motion under Rule 7.06 for an order removing the PGT as her litigation guardian.
>
> As a result, I adjourned the motions without a date to allow Ms Atas an opportunity to obtain a further capacity report and to bring her motion to remove the PGT as her litigation guardian. I also ordered as follows:
>
> > … such a motion must be brought on the basis of a strict timetable and on notice to all defendants and the PGT. I am not prepared, however, to order that Ms Atas obtain a capacity report in support of her motion from any particular assessor. That is for Ms Atas to decide and the sufficiency of any report shall be determined by the court. I am, however, prepared to order, pursuant to section 105(2) of the *Courts of Justice Act* and Rule 33 that Ms Atas also submit to a capacity assessment by one assessor chosen by the defendants, at the defendants' expense.
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> After a number of false starts and further adjournments, Ms Atas eventually served a notice of motion seeking such relief. In support of that motion, Ms Atas served a capacity report from Dr Alan Long dated April 11, 2011.

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[101] There were many appearances before Master Muir: April 27, 2010, July 23, 2010, November 4, 2010, November 19, 2010, December 23, 2010, June 15, 2011, July 27, 2011, November 28, 2011, December 29, 2011. These are all collected together at Exhibit "R" to the affidavit of Justin Anisman sworn September 30, 2014.

> Subsequent to the service of this report, the defendants requested that Ms Atas attend a capacity assessment with Dr Hy Bloom, a registered psychiatrist. This assessment has yet to take place due to the fact that Mr Daley now takes issue with my order that Ms Atas attend such an assessment. In addition, Ms Atas also takes issue with Dr Bloom conducting the assessment and does not want to produce her medical records as part of the assessment process.[102]

[131] Master Muir ordered Ms Atas to attend a defence capacity assessment, which could be conducted by Dr Bloom, and also ordered Ms Atas to produce medical records for use on this defence capacity assessment. On December 20, 2011, Ms Atas appealed Master Muir's order. Ms Atas failed to perfect her appeal, which had been scheduled for hearing on March 2, 2012. A review of the notice of appeal makes it clear that the appeal was devoid of merit.[103]

[132] Ms Atas has been critical of Peoples Trust seeking to proceed against her in light of her mental illness. This criticism is misplaced. Peoples Trust was not obliged to accept that Ms Atas suffered from an incapacitating mental illness. No jurist has criticized Peoples Trust for failing to provide the endorsements of Master Muir and of Newbould and Strathy JJ. to Himel J. or to Assessment Officer Fedson when the issue of Ms Atas' health was raised by her. Stinson J. found that Ms Atas was unable to articulate her problems to Himel J. because of her mental illness, and was also unable to bring the prior endorsements to the attention of Himel J., by reason of her mental illness. Stinson J. expressly found that there was "good faith efforts on all sides", and was not critical of anyone for the situation that gave him cause to set aside the Assessment decision of Assessment Officer Fedson.

[133] Ms Atas goes so far as to allege that a lawyer for Peoples Trust, Garth Dingwall, "interrupted" and "prevented" her from advising Himel J. of comments of other jurists doubting Ms Atas' capacity. Himel J., a senior and experienced jurist, would not permit a lawyer to run her courtroom. Stinson J. concluded that Ms Atas was unable, by reason of her disability, from raising these points with Himel J., not that Mr Dingwall took control of the courtroom and did not permit Ms Atas to speak. Ms Atas also argues that Mr Dingwall "withheld" these endorsements from Himel J. and thereby misled the court. These allegations are without merit. Mr Dingwall had no obligation to make Ms Atas' case for her. The consequence for Peoples

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[102] Endorsement of Master Muir dated December 19, 2011, paras. 12-15 (unreported).

[103] The issue of Ms Atas' capacity was raised by her in July 2010. She was found incapable and the PGT was appointed. The issue was then raised by Ms Atas again on November 1, 2010. The respondents were entitled to obtain their own capacity assessment pursuant to s.105(2) of the *Courts of Justice Act*, since the capacity issue was raised by Ms Atas. The Master was obviously right in so concluding. Ms Atas objected to Dr Bloom on the basis that he was biased. There was no evidence to support this bald allegation and the Master was correct in rejecting it. Ms Atas' medical history had been relied upon for the first capacity assessment and was an obvious requirement for a proper assessment. The Master was correct in so concluding and his carefully tailored disclosure order discloses no error in principle.

Trust in proceeding with its costs assessment when and how it did was that the certificate of assessment was set aside and now the assessment has to be done all over again.[104]

[134] Peoples Trust was clear in its position with Ms Atas, and there is no reason to believe that she failed to understand it. On August 9, 2010, counsel for Peoples Trust wrote an email to Ms Atas and stated:

> The onus of establishing that a party is under a disability rests with the person making the allegation. We will not be bringing any motion before the court to have the (sic) litigation guardian appointed on your behalf.[105]

[135] On the record before me, Peoples Trust and its solicitors did not believe that Ms Atas was legally incapacitated:

> Peoples' instructions to [Dale & Lessman LLP, Peoples Trust's lawyers], were not to bring any motion to have Ms Atas declared a party under a disability as Peoples did not have any evidence to believe that Ms Atas was suffering from any mental [in]capacity as her behaviour at no time changed. Peoples believed that Ms Atas' objective was to use any tactic, including doctors' notes and calling ambulances for herself during court proceedings, to obtain adjournments, delay proceedings, and [cause] opposing parties to incur unnecessary legal costs.[106]

Whatever conclusions might be drawn on this issue today, with the benefit of hindsight, Peoples Trust's views on this issue back in 2010, as reported in Ms Perri's evidence, were reasonable, given all the circumstances.

[136] At various times during which Ms Atas claimed to be legally incapable, she was represented by counsel. None of her counsel expressed to a court or to an adverse party a concern that Ms Atas lacked capacity by reason of mental illness. Ms Atas moved before the Court of Appeal for appointment of the PGT as her litigation guardian but withdrew this request on October 17, 2011, at which time Cronk J.A. concluded that involvement of the PGT was not required.

[137] Stinson J., as the case management judge, concluded that the first order of business necessarily had to be a determination of whether Ms Atas was capable to manage her own proceedings. Before this issue was decided, however, Ms Atas asked him to intervene in Peoples Trust's efforts to collect on the balances it claimed were owing on the Wycliffe and St George

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[104] Supplementary affidavit of Nadire Atas sworn May 1, 2015, paras. 31-33; further supplementary affidavit of Nadire Atas sworn May 15, 2015, paras. 22-23.
[105] Supplementary affidavit of Cristine Perri sworn May 13, 2015, para. 37 and Exhibit "14".
[106] Supplementary affidavit of Cristine Perri sworn May 13, 2015, para. 38.

Street Properties. Stinson J. described this situation as follows in an endorsement of September 25, 2012:

> In the past, Ms Atas has been employed as a real estate agent. For a period of time, her license to act as a real estate agent was in abeyance. Near the end of July 2012, however, Ms Atas succeeded in having her real estate license reissued. She became concerned, however, that in light of the outstanding notices of garnishment [from Peoples Trust], she would not be in a position to collect any income she might earn….
>
> Despite the fact that in my case management of the proceedings I directed that, logically, the first issue to be resolved should be the issue regarding Ms Atas' capacity to represent herself and to litigate on her own behalf, Ms Atas requested that I schedule an urgent motion to address the garnishment issue. I agreed to do so, in light of Ms Atas' assertion that she was being deprived of the opportunity to earn a living. I fixed September 12, 2012 as the date for argument of that motion, and gave directions regarding the timing for the exchange of materials.[107]

[138] Notwithstanding that this was her motion, and she claimed exigency as a basis for proceeding with it urgently, Ms Atas did not meet the deadline stipulated by Stinson J. for delivery of her materials. When she did deliver materials, it was for a much broader range of relief. At the return of the motion, Ms Atas was represented by Mr Napal, who asked for an adjournment. Stinson J. described this request as follows:

> On the occasion of the return date on September 12, 2012, Raj Napal appeared as counsel for Ms Atas. Mr Napal indicated that he was retained to argue the motion relating to the lifting of the notices of garnishment. At the outset, however, he stated that he had had insufficient time to prepare, that the motion materials prepared by Ms Atas were inadequate, no factum had been filed on her behalf and that he was not ready to proceed. Instead, on her behalf, he requested an adjournment to permit him to file "more focused" materials.[108]

[139] Stinson J. granted the adjournment but limited the returning motion to the request to lift the garnishments on the basis that the judgment of Aston J. had been paid. That motion has yet to be returned to court for decision on the merits.

[140] Ms Atas, in her materials, takes the position that she was incapable by reason of mental disability from 2007 to 2011. Junior counsel in her solicitor's office deposed:

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[107] *Peoples Trust* v. Atas, 2012 ONSC 5407, per Stinson J., paras. 10-11.
[108] *Peoples Trust* v. Atas, 2012 ONSC 5407, per Stinson J., para. 15.

> The root cause of the problems that occurred in the Respondents' matters were due to the fact that she was unrepresented and that she was under mental [in]capacity between 2007 and 2011 – so much such that the PGT intervened in relation to these actions.[109]

This statement is simply not true, as written. Ms Atas was found incapable in July 2010. She claimed to no longer be incapable by November 1, 2010. The delay in a judicial determination to this effect was a result of her delays in the process for her motion to have her found capable, from November 2010 until January 2014. There is no finding that Ms Atas was incapable from 2007 to 2011 and the record before this court does not support such a finding. Further, the PGT did not "intervene" – Ms Atas approached the PGT herself. The PGT agreed to act as litigation guardian on the strength of a capacity assessment and Master Muir's order in July 2010. The PGT took no position on whether it should be discharged from its role when this issue was raised by Ms Atas starting on November 1, 2010. And the PGT's role was not in respect to "these" actions (a reference to all the proceedings involving Ms Atas), but only in respect to the five proceedings case managed by Master Muir.

[141] Stinson J. provided directions respecting capacity assessments (including deciding Ms Atas' constitutional argument that she could not be compelled to submit to an assessment by adverse parties and her argument that the court lacks jurisdiction to make such an order under the *Courts of Justice Act*).[110] After many delays, including publicly funded *amicus curiae* for Ms Atas, the issue was finally decided, more than eighteen months after case management was ordered.

[142] On January 30, 2014, Stinson J., in a handwritten endorsement, found as follows:

> On the basis of the current medical evidence proffered by the plaintiffs, I am satisfied that Ms Atas is no longer under a disability and is fully capable of litigating this and her other matters without need for a litigation guardian. A declaration to that effect shall issue. I further order that, pursuant to rule 7.06(1)(b) this proceeding shall now be continued by Ms Atas without the PGT or any other litigation guardian. A similar order shall be made in all other proceedings in which the PGT was appointed as litigation guardian for Ms Atas.[111]

Stinson J. also ordered that the motion file be sealed because of the extensive personal information about Ms Atas and her mental health problems that was placed in evidence. Ms

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[109] Affidavit of Joshua Makori sworn March 2, 2015, para. 9.

[110] *Respondents v. Kagan Shastri* (2013), 116 OR (3d) 202 (SCJ), per Stinson J. It is not clear to me why the order of Master Muir would not have disposed of these issues. It is not clear from the record why the issue decided by the Master was relitigated in front of Stinson J. It appears that the appeal of Master Muir's decision was never heard and must now be regarded as moot.

[111] *Respondents v. Kagan Shastri*, handwritten endorsement of Stinson J. dated January 30, 2014 (unreported).

Atas did not place evidence respecting her mental illness before this court on the s.140 application. I do not have evidence of the nature of the mental illness, the way in which it affected Ms Atas during her period of incapacity, a finding as to when she ceased to have legal incapacity (the order of Stinson J. was effective from the date he made it, January 30, 2014, but it does not include a finding of when Ms Atas ceased to be incapable).

[143] On the record before me, Ms Atas was found incapable by Master Muir in July 2010. She claimed to have recovered from her incapacity by November 1, 2010. Cronk J.A. was satisfied in October 2011 that Ms Atas did not need a litigation guardian. Stinson J.'s order was not made for more than two years after this time. If this court was to give effect to Ms Atas' position, her incapacity extended back to 2007 and was not finally ended until January 2014.

[144] I accept that Ms Atas was mentally incapable between July and November 2010. I accept that she has long suffered from mental illness, though I make no findings about the nature and extent of this illness, and the effect it has on her ability to manage and conduct her litigation or to instruct counsel. I accept that Ms Atas was unable to do anything in the five proceedings in which the PGT was her litigation guardian between November 1, 2010 and January 30, 2014. I accept that it was incongruous for Ms Atas to be incapable for the purposes of five proceedings, but not for the rest of her litigation (an argument made by Ms Atas and which, I am told, was accepted by Stinson J.).

[145] Whether Ms Atas has used the issue of capacity with an intention to delay proceedings and drive up costs (as Peoples Trust believes), it has had that effect. I have no evidence that Ms Atas' mental illness may not once again interfere with the orderly progress of her litigation – Stinson J. called it "transitory" – which literally means "moving" – implying that it could return. In the absence of evidence of the nature and effects of Ms Atas' mental illness, I am not prepared to accept that it caused her vexatious conduct, or that her apparent better health now will lead to an improvement in her conduct. Her conduct has continued, and she has evinced an intention to pursue her litigation vexatiously, if given the opportunity to do so. I find on the record before me that Ms Atas' "transitory" mental illness is not an explanation or an excuse for the behaviour that provides a basis for the s.140 order.

H. Seventh Round of Proceedings: More Lawsuits and Other Proceedings

[146] Ms Atas sued lawyer Ralph Brian Steinberg for negligence and breach of retainer (**11-CV-429148**).

[147] Ms Atas brought another proceeding against Peoples Trust (**11-CV-429180**). In this action, in which Ms Atas claims a further $2.5 million, she claims against Peoples Trust for failing to take steps to have the PGT appointed on behalf of Ms Atas and various claims associated with the actions of Peoples Trust to enforce its mortgages against the St. George Street Property and the Wycliffe Property. Ms Atas has indicated that she will not proceed with this case, which is obviously vexatious.

[148] On July 20, 2011, in **Actions 11-CV-42952** and **11-CV-429573**, Ms Atas sued Dale & Lessman LLP, Christine Wallis, the Law Society of Upper Canada, and others, claiming $2

million, alleging that, as lawyers, they failed to notify the court of Ms Atas' disability and took advantage of her when she was legally incapable. Apparently these actions never proceeded beyond issuance of notices of action. In a letter dated May 15, 2012 to Regional Senior Justice Then respecting the proposal to order case management, Ms Atas wrote that "[t]hese actions have not been served, will not be served and have been voluntarily discontinued…. I have sworn an affidavit to this dated January 16, 2012." These actions are obviously vexatious.

[149] Ms Atas sued the Chahals, asserting claims related to the Chahals' purchase of the St George St Property (**11-CV-429151**). This second action against the Chahals is obviously vexatious.

[150] On August 4, 2011, Ms Atas filed two separate complaints with the Ontario Human Rights Tribunal. The first was for $3 million against Peoples Trust and its lawyers for failing to accommodate her disability by failing to bring a motion to appoint the PGT as her litigation guardian. The second was for $3 million against the Law Society of Upper Canada, Dale & Lessman LLP and Stikeman Elliott LLP. These complaints were eventually dismissed summarily.[112] These claims are obviously vexatious and designed to harass Ms Atas' opponents.

[151] On November 20, 2012, Ms Atas filed two complaints with the LSUC, one against Mr Stancer and the other against Mr Rose, accusing each of them of money laundering, fraudulent mortgage transactions, and, in the case of Mr Stancer, acting for Mr Gomes without instructions in 2005. The complaints are predicated in part on a collateral attack on the Gomes/Kelly Mortgage Action judgment and are designed to harass opposing counsel. They resulted in LSUC taking no action against the lawyers. They are obviously vexatious.

[152] On January 27, 2013, Ms Atas filed a complaint with the LSUC against Ms Wallis. The Law Society reviewed the complaint and closed its file. The Law Society indicated that it would be prepared to re-open the file once Ms Atas' capacity was determined and all of the underlying proceedings were finally disposed of by the courts and if there is evidence that "[t]he Court has made clear findings or comments on the record relating to the lawyer's conduct that may raise professional regulation concerns." Thus there is no ongoing complaint investigation of Ms Wallis at the LSUC. The complaint is a collateral attack on issues properly before the court in the Peoples Trust mortgage enforcement costs assessments. All of the issues will be dealt with in that assessment. As of the present, there is no basis for an allegation of professional misconduct against Ms Wallis, and if Ms Atas prevails in any of her positions in the assessments, no reason to believe that she will not be paid whatever she is owed. The complaint was a vexatious step designed to harass opposing counsel.

I. Case Management

(a) Overview of Case Management History

[112] The complaints were delayed until Stinson J. found Ms Atas legally capable.

[153] The issue of a proceeding to have Ms Atas declared vexatious was raised before McEwen J. in Civil Practice Court on January 12, 2012. This arose in the context of **10-CV-411415** (*Respondents v. Peoples Trust*). Ms Atas had noted Peoples Trust in default despite having been advised that Peoples Trust intended to move to dismiss the action as an abuse of process. McEwen J. held that a proceeding to declare Ms Atas vexatious would have to be brought by application rather than by way of a motion in an existing proceeding.[113]

[154] Some defendants in actions brought by Ms Atas wrote to Toronto Regional Senior Justice Then on April 12, 2012, requesting appointment of a case management judge for Ms Atas' litigation. Ms Atas supported case management: in a letter to Regional Senior Justice Then she wrote that she was "pleasantly surprised that Peoples Trust Company has now agreed to case management", something she said she had proposed in November and December 2011.

[155] By letter dated May 18, 2012, Low J., the Toronto Team Lead Civil, appointed Stinson J. to case manage various proceedings referenced in Low J.'s letter.[114] The scope of case management was subsequently expanded by my order to include all proceedings in which Ms Atas or her company is a party.

[156] On March 26, 2013, some defendants in Ms Atas' proceedings sought directions from Stinson J. as to whether the court had the jurisdiction to compel Ms Atas to undergo a psychiatric assessment. On June 14, 2013, Stinson J. ruled that the court did have the jurisdiction to make such an order. Stinson J. noted that Ms Atas had then indicated that she would obtain a fresh capacity assessment report, and so the question of compelling her to attend an assessment was adjourned. Ms Atas did obtain a fresh capacity assessment report, and on the basis of that report on January 30, 2014, the PGT was discharged as Ms Atas' litigation guardian.

[157] A scheduling case conference was held on March 26, 2014. This was the first conference at which steps were ordered to move forward in the underlying proceedings, everything having been stayed by direction of Stinson J. pending decision about Ms Atas' legal capacity. Ms Atas was represented by Dr Hamalengwa at this conference, though he was not yet on the record for Ms Atas. Stinson J. gave detailed directions for the next steps to be taken (these are set out fully in Schedule 2 to these reasons), including:

(a) counsel for Ms Atas was ordered to serve consent orders for setting aside administrative dismissals by April 4, 2014. This should have been a simple matter. It was still outstanding when this court took over case management in September 2014.

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[113] *Kallaba* v. *Bylykbashi*, [2006] OJ No. 545, per Lang J. (dissenting).
[114] Affidavit of Yan Wang sworn September 25, 2014, Exhibit "F".

(b) counsel for Ms Atas was directed to take out Stinson J.'s order of January 30, 2014, discharging the PGT. This was a simple matter. It was still outstanding when this court took over case management in September 2014.

(c) counsel for Ms Atas was to provide "specific advice concerning steps to be taken by Ms Atas including Rule 59.06 motions". I am not aware of this having been done. Ms Atas' advice on these points is scattered through her materials, and consolidated in Joshua Makori's affidavit, but even there it does not provide specifics of what is to be done (ie the precise grounds of motions to set aside or vary, the precise nature of the pleadings amendments to be sought). Ms Atas has provided considerable information on these topics, but in an open-ended way – a review of everything she has filed would be necessary to put together a comprehensive list of everything she proposes to do, and why, and there would be a material risk that she would later say there was something more or different that she wants to do, or why she says she should be able to do it now.

(d) counsel for Ms Atas was to provide a draft of all proposed amended pleadings in all actions where Ms Atas proposes to amend. This has not been done. It remains as a "to do" item in the affidavit of Joshua Makori. Ms Atas cannot be faulted for not proceeding with these tasks after September 2014, since I directed that the stay encompassed pleadings amendments and that they would not be considered until completion of the s.140 application.

Ms Atas' failure to take the steps ordered by Stinson J. in accordance with deadlines he stipulated was a continuation of her long history of failing to take required steps, adhere to schedules, and be ready to proceed on scheduled court dates. The consistent failure to follow these sorts of directions has been well beyond the ordinary vicissitudes of civil litigation and constitutes vexatious behaviour.

[158] On July 21, 2014, Ms Atas advised during a case conference that she was going to bring a motion for an order that Stinson J. recuse himself by reason of reasonable apprehension of

bias.[115] At Stinson J.'s direction, she provided a memorandum setting out the grounds for the recusal motion on July 25, 2014:[116]

- Stinson J. lacks jurisdiction to hear a s.140 application because he is the case management judge: Rule 77.06(2)[117]
- Stinson J. lacks jurisdiction to case manage actions in which there are final orders because those actions are concluded[118]
- Stinson J. lacks jurisdiction to case manage mortgagee's costs assessments[119]
- Stinson J. lacks jurisdiction to case manage actions under the Simplified Rules because there is no case management of actions under the Simplified Rules: Rule 77.02(2)(g)[120]
- Stinson J. has exhibited a reasonable apprehension of bias and is incapable of acting impartially because:
    - "Stinson J. has prior knowledge that the PGT settled the actions on a dismissal without costs basis and this knowledge has coloured his opinion

[115] The affidavit of Justice Anisman sworn November 21, 2016, on the issue of Ms Atas' motion that I recuse myself for bias, states that Ms Atas raised bias with Justice Stinson in July 2012. The materials attached as Exhibit "B" to this affidavit, said to be materials related to this earlier allegation of bias, are not in respect to that issue. All that is attached is Ms Atas' factum on the question of whether an opposing party is entitled to obtain a capacity assessment – the issue of bias is not mentioned in this factum. This point was not, in my recollection, clarified during oral argument. I proceed on the basis that Mr Anisman was in error – either in attaching the wrong document to this affidavit as Exhibit "B" or in his statement that there was a recusal motion in July 2012. Nothing turns on which error it was and so I have not felt it necessary to go back to the parties on this point for clarification.

[116] Exhibit 200 to the Affidavit of Cristine Perri sworn September 23, 2014; Exhibit "Z" to the Affidavit of Justin Anisman sworn September 30, 2014 (the "Recusal Memorandum"). (The references immediately following this footnote are to the copy attached to Mr Anisman's affidavit and the page numbers correspond to the record containing Mr Anisman's affidavit).

[117] This issue was raised with me during case management of the s.140 application, and I address it below. Ms Atas frequently conflates jurisdiction with bias. What the two issues have in common is that both challenge the propriety of the court adjudicating a dispute.

[118] The argument here is that, presumably, there is nothing left to manage – the basis on which Ms Atas took the position that Stinson J. could not case manage her attempts to re-open proceedings she acknowledges have been decided on a final basis.

[119] The argument here is, presumably, that since the *Mortgages Act* provides that such costs are to be assessed by an Assessment Officer, a judge cannot fix them.

[120] This argument misconstrues the Rule: it denies the benefit of case management to simplified rules proceedings on the basis that, because of their inherent simplicity, there is no need for it. This does not preclude the court, as a matter of sound administration, from taking simplified rules proceedings into common case management with other proceedings, as has been done here.

on the merits of the actions overall and interferes with his ability to act impartially"[121]

- Stinson J. indicated at a case conference that Ms Atas had "no need to inspect documents" at that time[122]
- Stinson J. deferred Ms Atas' requests to amend her pleadings in various actions[123]
- Stinson J. refused Ms Atas' request to bring back a motion that had been adjourned on September 12, 2012[124]
- Stinson J. refused Ms Atas' request to bring a motion for production of documents[125]
- Stinson J. directed that defending parties need not deliver statements of defence in some actions pending decision on the proposed s.140 application[126]
- Stinson J. exhibited bias or created a reasonable apprehension of bias by directing that no motions or steps can proceed in any actions until the issue of Ms Atas' capacity was decided[127]
- Stinson J. refused to permit a motion to proceed to set aside Registrar's orders dismissing actions administratively pending decision on the capacity issue[128]
- Stinson J. exhibited bias in the way in which he conducted the proceedings leading to the motion to remove the PGT as litigation guardian for Ms Atas, including "acquiescing" to opposing counsel's "demands" to submit to a defence capacity assessment and to produce medical records for that purpose[129]
- Stinson J. exhibited bias when he said to Ms Atas:

[121] Recusal Memorandum, p. 646.
[122] Recusal Memorandum, p. 647.
[123] Recusal Memorandum, p. 647.
[124] Recusal Memorandum, p. 647.
[125] Recusal Memorandum, pp. 646-7.
[126] Recusal Memorandum, p. 646.
[127] Recusal Memorandum, p. 646.
[128] Recusal Memorandum, pp. 647-8.
[129] Recusal Memorandum, p. 649.

> That she will be held strictly to time limits and has run out of indulgences. Stinson J. indicated that N. Atas has difficulty in maintaining lawyer/client relationships and it is for her to sort out her issues of legal representation.[130] Stinson J. reiterated that there will be no more delays resulting from a disintegration of N. Atas' relationships with lawyers. Moreover, Stinson J. indicated that N. Atas has chosen to issue over twenty lawsuits; that has demonstrated to the court that she has the capacity to proceed with these actions. As such, she must respect the rights of the other parties to have these matters dealt with in a timely fashion. Stinson J. indicated that these matters have been in "suspended animation" and that they ought to proceed.[131]

- Stinson J. "associates Nadire Atas with negative conduct and makes decisions on it" and is therefore biased and incapable of being impartial[132]
- Stinson J. said that "if the s.140 application is successful then the motions will not be required" in reference to motions Ms Atas wishes to pursue[133]
- Stinson J. "is no longer capable of being persuaded by evidence and legal arguments…. Justice Stinson's mind is closed to anything Nadire Atas says…."[134]

[159] Ms Atas wrote to Stinson J. again about recusal on September 8, 2014. In it, Ms Atas wrote:

> Your Honour has repeatedly shown bias by arbitrarily terminating one party's rights as conferred by current *Rules of Civil Procedure*, and proceeding in breach of the principles of natural justice and procedural fairness.

From the context, it appears that Ms Atas took the position that these allegations were justified by Stinson J.'s decision to stay all matters until the s.140 application was decided, including any requirement from adverse parties to plead over to Ms Atas' claims (to the extent that they had not done so already). This is no basis for an allegation of bias. Indeed, it is a perfectly sensible course for a case management judge to take. These meritless allegations are vexatious.

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[130] Ms Atas was not represented by counsel on the motion to discharge the PGT; *amicus curiae* was appointed to assist the court. Stinson J.'s comment here was made in that context: *amicus curiae* was appointed on the capacity issue, but Ms Atas would have to sort out her own representation for other steps in the litigation.
[131] Recusal Memorandum, p. 650.
[132] Recusal Memorandum, p. 650.
[133] Recusal Memorandum, p. 651.
[134] Recusal Memorandum, p. 652.

[160] The first four points listed above have to do with the jurisdiction of any case management judge, and not with Stinson J. in particular. In the aggregate they are an attack on any case management judge's ability to grapple with the entirety of these proceedings and to do what is sorely needed: shepherd them all to a just conclusion. All of the grounds cited to support the allegation of bias (excepting only the last ground) are unmeritorious. They reflect Ms Atas' thinking though: when a judge disagrees with her on a point, he is biased against her. This is not a proper basis for an allegation of bias. Ms Atas' last allegation (if it was true) would be a basis for finding bias. However, as a naked allegation it has no weight. The particulars offered to support it do not come close to establishing the conclusion urged by Ms Atas.

[161] Two points need to be made here. The strength of case management is that the judge comes to know the case and the parties do not have to educate a fresh judge about the case every time they come to court. The need for formal process on procedural matters is greatly reduced as a result, which should lead the parties and the court to save considerable time and expense. A further consequence is that the court comes to know the parties and their lawyers and is able to direct them less formally. This kind of familiarity is essential to move Ms Atas' matters forward efficiently. The remarks attributed to Stinson J. by Ms Atas are no more than the usual exchanges between parties and the court during case management.

[162] Stinson J. did not recuse himself.[135] The recusal motion did not proceed prior to a decision to replace Stinson J. with me as the case management judge on September 19, 2014. These points were made clear in a letter dated September 19, 2014 from Toronto Civil Team Lead, Himel J., to the parties:

> I also understand that, recently, a number of opposing parties have indicated an intention to seek an order against Ms Atas under s.140 of the *Courts of Justice Act*. I further understand, at a case conference held on July 21, 2014, Ms Atas announced an intention to seek to have Justice Stinson recuse himself as case management judge, and that she has subsequently submitted a memorandum articulating her position.
>
> An allegation of bias such as that advanced by Ms Atas is a very serious matter and is not taken lightly. Stinson J. has made it plain that he has not prejudged any aspect of the proceedings. Nevertheless, and without in any way acknowledging that there is any merit to Ms Atas' assertion, Justice Stinson has suggested that it would be far more expeditious for a new judge to be assigned responsibility for the future case management of these cases. In this fashion the effort, expense and additional delay involved in litigating the recusal issue can be avoided.
>
> I have discussed with Justice Stinson the history and current status of these longstanding matters, and the desirability (in the interests of all parties) of

[135] In fact, the recusal motion was never brought.

> advancing them to an early conclusion, with limited additional interlocutory proceedings. I have, therefore, with considerable reluctance, accepted his suggestion that he be relieved of his duties as case management judge for these matters.
>
> By way of this letter I am designating Justice David Corbett as the new case management judge responsible for all of Ms Atas' matters.

[163] Notwithstanding the clear terms of this letter, Ms Atas subsequently took the position that Stinson J. had recused himself from his position as case management judge and that all decisions of Stinson J. were void as having been made by a biased judge. Ms Atas did not appeal any of Stinson J.'s orders, nor did she move to set any of them aside or vary them. Rather, her position was that the orders were now rendered "tainted and void" by reason of Stinson J.'s recusal.[136] Apparently she felt everything should be done over again going back to the start of case management in 2012. In an email to my assistant, concerned about plans of counsel for Peoples Trust seeking to apply one of Stinson J.'s orders precluding further litigation steps, she wrote:

> Once a reasonable apprehension of bias has arisen and in this case, the Judge has recused himself, are all previous orders rendered null and void? There is clear case law on this matter.[137]

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[136] Email from Ms Atas to Justice D.L. Corbett dated September 23, 2014, Exhibit "203" to the affidavit of Cristine Perri sworn September 23, 2014.

[137] Email from Ms Atas dated September 23, 2014, Exhibit "203" to the affidavit of Cristine Perri sworn September 23, 2014, Record, p.1872. Ms Atas attached a decision of Baltman J. in *R.* v. *Davis*, 2012 ONSC 5526, which Ms Atas said stood for the proposition she set out in her email. That is not the principle that *Davis* stands for. I know *Davis* rather well, as it happens. The accused were charged with tax fraud. CRA was the investigating authority. The case was tried by a judge and jury. I was the judge. For many years I had an ongoing tax dispute with CRA; these things happen – judges are taxpayers too. My dispute with CRA was settled before the trial in *R.* v. *Davis*. Then, mid-way through the trial, CRA resiled from the settlement and refused to complete it. I found myself, mid-trial, in a position where I was in litigation with the prosecuting authority. My dispute was unrelated to the *Davis* prosecution, but I was concerned that it could give rise to a reasonable apprehension of bias. I reported it to the parties and suggested that I should recuse myself. This was a significant event, since the trial was into its third week before a jury. The parties sought instructions and we reconvened. All parties agreed that I should recuse myself. Efforts were made to continue the trial based on the rulings I had made, but another judge (Sproat J.) concluded that this was not feasible. A mistrial was declared and the trial started fresh before Baltman J. The issue before Baltman J. was whether my rulings from the first trial should apply in the second trial. The accused did not agree that they would. Central to the issue was a ruling I had made in a *Jarvis* application that went against the accused. I had given the ruling but had reserved my reasons as of the time of recusal. I concluded that I could not give reasons for a pre-recusal decision after circumstances had arisen giving rise to a reasonable apprehension of bias. Baltman J. noted in her decision: "If the judge who is recusing for bias seems himself to be of the view that pre-trial rulings may appear tainted, that in my view ends the matter." This does not stand for the proposition that the interlocutory rulings of a case management judge are all "null and void" if he subsequently recuses himself from the case.

[164] That is not how litigation works. An order, once made, governs. It only ceases to govern if and when it is overturned by a court with the authority to do so.

(b) Case Management of the s.140 Application

[165] As noted above, I was appointed case management judge in place of Stinson J. on September 19, 2014. Since that time there have been at least 26 case management conferences, motion appearances and directions, as described in the chart attached as Schedule "2".[138]

[166] Broadly speaking the following issues arose during the course of case management, some before argument of the s.140 application on the merits, and some after:

(a) Ms Atas sought to litigate the underlying merits of her many proceedings to establish their merits. I refused to permit this, but without prejudice to Ms Atas relying on the failure of the applicants to address the merits beyond what could be established from the pleadings and court records and decisions. This point, revisited many times, included orders refusing documentary disclosure, affidavits of documents, discoveries in the underlying proceedings, and orders refusing examinations of some 22 witnesses to explore those merits.

(b) Ms Atas brought, or sought to bring, numerous motions that various judges recuse themselves or be barred by this court from hearing her matters.

(c) Immediately after final argument on the s.140 application, Ms Atas posted numerous defamatory internet postings about many of her litigation opponents, including many of the applicants, respecting matters in issue in the underlying proceedings. This prompted:

    (a) a motion by the applicants to adduce fresh evidence to put this conduct into evidence on the s.140 application;

    (b) an action for defamation against Ms Atas by many of the applicants in this proceeding, and others;

    (c) motions for an interim and then an interlocutory injunction to restrain Ms Atas from publishing defamatory statements and related relief;

[138] In Schedule 2 to this judgment I summarize these orders with one category of exception: most of the case conferences before Stinson J. were memorialized in "minutes" which are lengthy and record the substance of discussions, and not just the orders resulting from the conference. Generally I have not attempted to distill the orders from these case conferences, except to the extent reflected in the body of this decision. The full minutes are contained in the record on this application.

(d) a motion by Ms Atas to adduce fresh evidence to the effect that her allegedly defamatory statements are true (thus placing a record before the court respecting the merits of the underlying proceedings, something which the court had previously refused to permit her to do);

(e) an application that Ms Atas be found in contempt for breaching the interim injunction;

(f) a motion by Ms Atas for a *Rowbotham* order appointing counsel for her, at public expense, to defend the Contempt Proceedings.

(i) <u>Ms Atas Seeks To Litigate the Underlying Proceedings in the s.140 Application</u>

[167] This position was vexatious in its conception and was pursued vexatiously. Given the rather obvious point that mortgage disputes on two small multi-unit residential properties should not spawn over four dozen proceedings spanning more than a decade, Ms Atas' position that she should be able to adduce a record on the merits of all the underlying proceedings was simply unreasonable. Ms Atas would not accept this decision. She returned to the issue again and again seeking discoveries, seeking examinations of 22 witnesses, most of them adverse in interest to her,[139] seeking to strike affidavits because the deponents had no personal knowledge of the underlying proceedings, cross-examining on the underlying proceedings, delivering lengthy responding materials dwelling on the underlying merits of her claims rather than the evidence of her repeated litigation misconduct. Then, when she had failed to persuade the court to permit her to litigate the merits of the underlying proceedings in the application, she published the alleged defamatory statements on the internet, apparently trying to achieve through this means the opportunity to adduce a record respecting the merits of the underlying proceedings in defence of the defamation proceedings. And then when advised by this court that she might not achieve her goal in this fashion, she alleged bias.

[168] Many of Ms Atas' claims are follow-on litigation: she sues her own lawyers for alleged negligence leading to her prior litigation losses. These claims are almost always impermissible collateral attacks on judicial decisions. In this respect, Ms Atas defends this application in much the same way that the vexatious litigant did in *Mascan Corp.* v. *French*, in which the Court of Appeal wrote:

> The appellant strenuously contended that the proceedings in issue here did not relitigate matters already decided. This submission cannot be accepted because it is plain that the purpose of the proceedings was to challenge and overturn decisions of the Residential Tenancy Commission which had been upheld on appeal by the Divisional Court and this court…. By any objective standard, it is

[139] Letter from Mr Napal dated May 4, 2015, supplementary affidavit of Cristine Perri sworn May 13, 2015, para. 5 and Exhibit "S".

> obvious that the repeated attempts by the appellant to overturn the decisions of the Residential Tenancy Commission could not succeed and that they delayed and prolonged the proceedings commenced by the respondent to enforce payment of rent which was due.[140]

[169] As stated by Strathy J. (as he then was) in a case involving loss of property through mortgage enforcement proceedings:

> Any objection that the plaintiffs may have had about the validity of the mortgage or the actions of the mortgagee should have been raised in the action brought by National Trust. This is a classic attempt to relitigate a case that has already been decided by a court of competent jurisdiction – as such it is an abuse of process and is frivolous and vexatious….[141]

[170] In Ms Atas' case, she seeks to overturn mortgage enforcement decisions in the Gomes/Kelly Action and the two Peoples Trust Mortgage Actions, both directly, by suing the parties, their lawyers, and other professionals involved in those matters, including the purchasers of one of her properties, and in addition, she has sued many of her lawyers to delay or defeat their attempts to collect their unpaid fees. While I am not prepared to find that Ms Atas litigated the issue of her capacity with no legitimate basis, her approach to that issue was vexatious and delayed all of her proceedings for a period of over three years. She then litigated these s.140 proceedings vexatiously, leading to a further delay of over three years. Some of the delay arising from the capacity and vexatious litigant issues would have been inevitable in order to adjudicate those issues fairly, but the resulting overall delay in all the underlying proceedings of roughly seven years has been a consequence of, and in my view a goal of, Ms Atas' vexatious approach to her litigation. In the result she has delayed and prolonged the process for deciding the quantum of mortgage enforcement costs owed to Peoples Trust and resolving disputes over the quantum of legal fees she owes to her lawyers.

(ii) Ms Atas Brings Repeated Recusal Motions

[171] I address the merits of the recusal motions below. The one point that had a principled basis for argument concerned the Rules respecting case management. The other recusal allegations were without merit and inherently vexatious.

[172] Having lost the recusal motions and having lost the s.140 application, Ms Atas then complained about this court to the Canadian Judicial Council. I am not aware of the substance of the complaint but I have been advised by the Office of the Chief Justice that it has been dismissed without requiring a response from me. This information was not in evidence on the s.140 application and does not bear on the merits of this application. However, in the interests of

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[140] *Mascan Corp.* v. *French* (1988), 64 OR (2d) 1, per Blair J.A.
[141] *Shrivastava* v. *Bank of Nova Scotia*, 2011 ONSC 3994, per Strathy J. (as he then was), para. 14.

preventing a further round of bias allegations, the following points are worth making now. The fact of the complaint does not give rise to a reasonable apprehension of bias, either for the purposes of this judgment or for future case management of Ms Atas' litigation. To paraphrase from Doherty J.A. (quoted below[142]) a litigant does not get to select her judge or decide that a certain judge will not preside in her matter. The fact of the recusal motions, and the fact of the complaint to the Canadian Judicial Council, are not themselves bases for recusal. That is, no inference is drawn that a judicial officer will treat a litigant unfairly or in a biased manner because she has objected to his conduct. It cannot be otherwise, as a matter of policy; otherwise a litigant could avoid a judge simply by making complaints or objections.

[173] Ms Atas' frequent allegations of bias against judges are further examples of vexatious conduct.

J. Extra-litigation Conduct: Defamatory Internet Publications

[174] In my endorsement of March 18, 2016, respecting the request by the applicants to adduce the internet postings as fresh evidence, I held as follows:

> Conduct outside the courtroom may be relevant to the question of whether a litigant is vexatious. The roughly 2000 pages of apparently defamatory material was published on the internet shortly after oral argument was completed in September 2015. The allegations in the postings relate to the subject-matter of the litigation that underlies the s.140 application. In my view the new evidence is, arguably, part of a pattern of conduct: to use the words used by Mr Napal (Ms Atas' counsel) in oral argument, Ms Atas has feelings of outrage and injustice arising from her perception of past events, and the internet postings are Ms Atas giving voice to those feelings. Given this overall context, the internet postings are intimately connected with the s.140 application. Motion granted.

[175] So, what have Ms Atas' "feelings of outrage and injustice" led her to publish? I have reviewed the fresh evidence filed setting out the internet postings. It is evident from the text of the impugned publications that they were published by Ms Atas or on her behalf.[143] Indeed, she has now acknowledged publishing them.[144] From my review[145] of this evidence, Ms Atas states that various people (lawyers and non-lawyers[146]) are or have:

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[142] Quoted at para. 231, below.

[143] In her affidavit sworn April 22, 2016 in the Current Defamation Proceedings, Ms Atas acknowledges having published most, perhaps all, of the impugned publications.

[144] Affidavit of Nadire Atas sworn April 22, 2016, paras. 15, 21, 25, 73 and 81. The acknowledgments, on their face, are somewhat oblique: Ms Atas characterizes her postings to focus on the factual allegations that underlie her conclusions, but does not deal directly with the most incendiary publications such as, for example, describing someone as a "fraudster", a "thief", and as "belong[ing] in jail".

(i) "dishonest"[147]

(ii) "fraudsters"[148]

(iii) "jackasses"[149]

(iv) "incompetent"[150]

(v) "idiots"[151]

(vi) "fabricated documents"[152]

(vii) "thieves"[153]

(viii) "inept"[154]

(ix) "unscrupulous"[155]

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[145] I have been through all of the impugned publications. They are highly repetitive – the impugned publications were published in multiple places on the internet. What is set out in my decision is a reasonable summary of those materials but one that does not include every defamatory remark.

[146] I have not listed law firms expressly referenced in the impugned publications in the interests of reducing repetition. Generally, the following law firms are referenced where lawyers from those firms are maligned: Dale & Lessman LLP (Christina J. Wallis, Robert E. Dale, Q.C., Garth Dingwall, David E. Mende), Kagan Shastri LLP (Rahul Shastri and David Winer), Stancer Gossin Rose LLP (Raymond Stancer, Eric Gossin and Mitchell Rose), Rochon Genova LLP (J. David Sloan), Bresver, Grossman, Chapman and Habas LLP and Bresver, Grossman, Scheininger & Chapman LLP (David Bresver), Steinberg, Title, Hope & Israel LLP (Taras Kulish), Rose & Rose LLP (Blair Rose). I have also not listed Peoples Trust Company in places where it is mentioned in the impugned publications (Frank Renou (former Chief Executive Officer), Derek Peddlesden (former interim Chief Executive Officer and subsequently advisor to the Chief Executive Officer and Board of Directors), Martin Mallich (Manager Default Management Department) and Sharon Small (Manager, Mortgage Administration Department, Eastern Canada), and lawyers at Dale & Lessman, solicitors for Peoples Trust), or Commerce Ventures (Tom and Nella Pires).

[147] J. David Sloan, Rahul Shastri, Robert E. Dale, Q.C., Christina Wallis, Garth Dingwall, David E. Mende, Matthew Cameron.

[148] Robert E. Dale, Q.C., Christina Wallis, David J. Sloan, Raymond Stancer, Garth Dingwall, David E. Mende, Mitchell Rose, Martin Mallich, Frank Renou, Peddlsden, Matthew Cameron, David Winer, David Bresver, Sharon Small, Ralph B. Steinberg, Blair Rose, Taras Kulish, Rahul Shastri, Raymond Stancer, Blair Rose, Tom Pires, Nella Pires, Martin Rice.

[149] David Mende, Christina Wallis, Matthew Cameron, David Winer, David A. Baker, Ralph B. Steinberg, Raymond Stancer, Blair Rose, Rahul Shastri, Mitchell Rose, Scott Kelly.

[150] Rahul Shastri, Taras Kulish, Ralph B. Steinberg, David Winer.

[151] Christina Wallis, David J. Sloan, Garth Dingwall, Frank Renou, Matthew Cameron, Rahul Shastri, Nicholas Canizares, Sharon Small, Ralph B. Steinberg, Raymond Stancer, Robert E. Dale, Q.C., David E. Mende, Martin Rice.

[152] David A. Baker, David Bresver, Matthew Cameron.

[153] Christina Wallis, Derek Peddlesden, Frank Renou, Mitchell Rose, Raymond Stancer, Robert E. Dale, Q.C.

[154] David Winer, Rahul Shastri.

(x) lawyers who "should be disbarred"[156]

(xi) "untruthful"[157]

(xii) "knowingly sworn and filed false affidavits"[158]

(xiii) "misled the court"[159]

(xiv) "violated" s.347 of the *Criminal Code of Canada*[160]

(xv) "fabricated expenses and repairs" on a building[161]

(xvi) "confiscated attorned rents" or caused rents or "sale proceeds" "to disappear"[162]

(xvii) "taken instructions… to defraud borrowers"[163]

(xviii) "currently the subject of an investigation with the LSUC"[164]

(xix) "fabricated a judgment"[165]

(xx) "belong in jail"[166]

(xxi) "lack scruples"[167]

(xxii) "lied" and in some cases "lied to [a judge]"[168]

(xxiii) "under investigation for fraud"[169]

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[155] David E. Mende, Garth Dingwall, Robert E. Dale, Q.C., Christina Wallis, Matthew Cameron.
[156] Kahul Shastri, Christina Wallis.
[157] Taras Kulish.
[158] Garth Dingwall, Christina Wallis, Matthew Cameron, Mallich, Derek Peddlesden, Sharon Small, Robert E. Dale, Q.C, David E. Mende.
[159] Christina Wallis, Garth Dingwall, Matthew Cameron, Sharon Small, Raymond Stancer, Blair Rose, David E. Mende.
[160] Frank Renou, Derek Peddlesden, Martin Mallich, Sharon Small, David E. Mende.
[161] Derek Peddlesden.
[162] Christina Wallis, Derek Peddlesden, Robert E. Dale, Q.C., Garth Dingwall.
[163] Matthew Cameron.
[164] Garth Dingwall, Christina Wallis, David Bresver, Ralph B. Steinberg.
[165] Christina Wallis, Sharon Small, Matthew Cameron.
[166] David J. Sloan, Garth Dingwall, Raymond Stancer, Mitchell Rose, Christina Wallis, David E. Mende, Martin Rice, Matthew Cameron.
[167] Garth Dingwall, Robert E. Dale, Q.C., Christina Wallis.
[168] David J. Sloan, Garth Dingwall.

(xxiv) "a money launderer"[170]

(xxv) engaged in "absolutely asinine conduct"[171]

(xxvi) "screwed up a simple discharge of a mortgage"[172]

(xxvii) "provided false information to the court to conceal this conflict of interest"[173]

(xxviii) "fabricated a settlement"[174]

(xxix) engaged in "despicable conduct"[175]

(xxx) lawyers who "act for parties who have not retained them"[176]

(xxxi) have sued "on behalf of people without their knowledge or authorization in order to improperly collect legal fees and judgments for… personal gain."[177]

(xxxii) "untrustworthy"[178]

(xxxiii) lawyers who "lack morals"[179]

(xxxiv) lawyers who "steal money"[180]

(xxxv) "degenerate"[181]

(xxxvi) "convicted fraudsters"[182]

(xxxvii) "arranged fraudulent mortgages"[183]

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[169] Christina Wallis, Ralph B. Steinberg, Robert E. Dale, Q.C.
[170] Frank Renou, Robert E. Dale, Q.C., Christina J. Wallis.
[171] Christina Wallis, Martin Mallich
[172] Nicholas Canizares.
[173] David Bresver.
[174] Moses Muyal.
[175] David E. Mende, Ralph B. Steinberg, Christina Wallis.
[176] Raymond Stancer, Mitchell Rose.
[177] Raymond Stancer.
[178] Robert E. Dale, Q.C.
[179] Robert E. Dale, Q.C.
[180] Robert E. Dale, Q.C.
[181] Robert E. Dale, Q.C.
[182] Tom Pires ("convicted by [FSCO] for arranging fraudulent mortgages") and Nella Pires. On January 11, 2006, Mr Pires and Mega Corp. pleaded guilty before FSCO of carrying on business as a mortgage broker without a license. Mr Pires was fined $1000 plus a $250 victim impact charge. This does not constitute a conviction "for arranging fraudulent mortgages".

(xxxviii) "sell credit applications to loan sharks and receive additional concealed fees"[184]

[176] The impugned publications were published repeatedly on the following internet sites anonymously or pseudonymously:

- wordpress.com
- ripoffreport.com
- outscam.com
- yelp.ca
- lawyerratingz.com

The total in the record runs to more than 2000 pages.

[177] The earliest publication of impugned statements was on September 21, 2015.[185] Publication apparently continued until at least April 21, 2016 (notwithstanding the interim order made by this court on January 6, 2016 – an issue in the Contempt Proceedings).

[178] The impugned publications in respect to Raymond Stancer, Eric Gossin and Mitchell Rose, and their firm Stancer Gossin Rose LLP, appear to be in direct violation of the 2010 Defamation Injunction, an issue in the Contempt Proceedings.

[179] Some of the impugned words might be considered to be "mere abuse" and thus not actionable: calling someone a "jackass" or "asinine" (or, as Ms Atas also sometimes did, calling someone a "twit") is probably empty disapprobation. It is juvenile and rude, and may support a finding of harassment in combination with other conduct, but it is probably not defamatory. Most of the impugned words, described above, are clearly defamatory.

[180] Why did Ms Atas do this? It is very bad behaviour, impossible to justify, almost certainly will lead to substantial judgments against Ms Atas in favour of a score of people, and

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[183] Nella Pires, Ron Hatcher.
[184] Tom Pires, Nella Pires, Martin Rice, Commerce Ventures.
[185] Ms Atas makes the point that she published similar statements in 2012 as part of her argument that this evidence is not "new" since the applicants did not rely upon the earlier postings. That is not true; they did rely on Ms Atas' earlier postings, but they did not place great emphasis on them. Ms Atas' publications after the s.140 application was argued on the merits were clearly facts that could not have been known at the time of the argument of the application, and the fact that there had been prior postings does not derogate from this conclusion. I have not relied upon Ms Atas' evidence of prior postings in her responding record on the fresh evidence motion for the purposes of the underlying application since the applicants did not seek to have that evidence adduced or relied upon for any purpose other than the motion to adduce fresh evidence (*vide* affidavit of Nadire Atas sworn February 17, 2016, Respondents' Record on the fresh evidence motion dated March 11, 2016).

serves to show that Ms Atas is ungovernable (coming with the decision on the s.140 application under reserve, and in apparent violation of the 2010 Defamation Injunction). The answer seems to me to have appeared in early case conferences following discovery of these publications. I suggested to Ms Atas that she had made these postings so that she could litigate the truth of the statements she had made, despite the stay of proceedings and the potential consequences of the s.140 application. By her response I concluded that I had hit the proverbial nail on the head and told her that, in my role as case management judge, I might not permit her to do in this way that which she may be precluded from doing by court order in the case management process and the s.140 application. This obviously startled and enraged her.

[181] Ms Atas is obsessed and possesses poor insight into her situation and consequent poor judgment. But she is intelligent and capable of formulating and making complex arguments. I am satisfied that she posted the impugned statements, not just to vent her "feelings of outrage and injustice" but in the knowledge that her publications would likely spawn a further round of defamation proceedings in which she could have an opportunity to raise the many issues she has sought to raise in the underlying proceedings. She has not done it because she believes the statements are true: even within the penumbra of her obsessions, she is smart enough to understand that she cannot prove that all of the people she has named are "fraudsters", "thieves" and "liars". She doesn't care that she cannot prove these things: her goal is to punish these people and to have her day in court to air her many grievances. She is judgment-proof, she believes, and so the risk of adverse judgments is of little moment to her. It is hard to imagine conduct by a litigant that could be better described by the word "vexatious".

[182] But there is more. Ms Atas pursued a vendetta online against one of the lawyers who acted for Peoples Trust against her, Matthew Cameron. Ms Atas posed as Mr Cameron on the popular internet site "craigslist". In Mr Cameron's name, she sent numerous and explicit messages soliciting sex. Peoples Trust's solicitors obtained the metadata which shows that Ms Atas' internet address was where the posts came from. When Ms Atas was confronted with this information, the posts stopped immediately. I am satisfied on a balance of probabilities that Ms Atas sent these posts, dishonestly, maliciously, and in order to inflict misery upon a young lawyer who had the misfortune of being assigned to work on the Peoples Trust litigation. This was vile, inexcusable behaviour by Ms Atas.

[183] I conclude that the internet postings establish that Ms Atas is ungovernable and bent on a campaign of abuse and harassment. It is powerful evidence in favour of the s.140 order sought by the applicants.

K. Extra-Litigation Conduct: Administrative and Regulatory Complaints

[184] Ms Atas argues that I cannot prohibit her from proceedings before bodies other than "courts". As will be seen below, I accept that submission. She also argues that:

> The Human Rights application[s are] under… different legislation and filing an application to be considered under the Human Rights Code does not make me a vexatious litigant in a civil matter.[186]

On one reading of this sentence, Ms Atas is correct: making a human rights complaint is not inherently vexatious behaviour. Rather, it is Ms Atas' position that her behaviour in administrative proceedings is not relevant to an application under s.140 of the *Courts of Justice Act*. And that proposition is simply wrong – the entire range of the respondents' conduct towards the applicants and towards other persons with whom she is engaged in litigation is potentially relevant to a s.140 application – just as her conduct in posting defamatory statements is relevant to this application.[187] The complaints Ms Atas has filed with the Human Rights Tribunal against the respondents and other litigants are obviously vexatious and misconceived. They are premised on the notion that parties and counsel adverse in interest to her owed her duties under the *Human Rights Code* in respect to her mental illness. They did not: those adverse in interest to her did not provide her with goods or services and owed her no special duties. Any unfairness that resulted from steps taken against Ms Atas while she was ill is a matter for the court to address and (if appropriate) remedy in the proceedings in which those steps were taken.

[185] Ms Atas' multiple complaints to the LSUC about numerous lawyers have been similarly vexatious. To paraphrase from the responses provided by the LSUC, the matters of which Ms Atas complains are related to proceedings before the courts. In the absence of a determination by the courts of conduct that could constitute professional misconduct, the LSUC would not pursue an investigation of Ms Atas' claims. Ms Atas has repeatedly taken the position that these many complaints are thus ongoing. This is a false characterization of the disposition of these complaints. She was told, in effect, "come back if and when there is ever anything to complain about". In her defamatory internet postings she has repeatedly characterized these responses as meaning that the lawyers are subject to ongoing fraud investigations, a characterization that is simply false.

[186] I am satisfied that Ms Atas has made complaints to the LSUC and the HRTO to harass and embarrass those with whom she has come into conflict. This is conduct that may be considered on this application.

L. Frivolous Position on the Motion to Adduce Fresh Evidence

[187] Ms Atas opposed the applicants' motion to adduce fresh evidence of her internet postings after the s.140 application was argued on the merits. This opposition turned out to be frivolous.

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[186] Further supplementary affidavit of Nadire Atas sworn May 15, 2015, para. 32.
[187] See *Bank of Montreal* v. *Cudini*, 2013 ONSC 482, per Gray J., para. 108; *Bishop* v. *Bishop*, [2011] OJ No. 1290 (CA).

[188] The internet postings are clearly defamatory. They are clearly of and about many of the applicants. They are clearly a form of harassment and archetypal vexatious conduct. They clearly arose after the conclusion of argument on the s.140 application.[188] Once these points are apparent, the issue for a fresh evidence application is whether it is proven that the impugned statements were published by Ms Atas. While this was not conceded at the outset of the fresh evidence motion, ultimately Ms Atas conceded that she had published the impugned statements and took the position that her defence of them would be truth and justification. With this concession having been made, it was simply vexatious to oppose the motion that the postings be admitted into evidence on the s.140 application.

[189] Ms Atas' primary position in her affidavit on the motion to adduce fresh evidence was that the internet postings were true and somehow not defamatory. Her secondary position was that the postings are not fresh evidence because other people have posted negative comments (an unproven allegation) and she herself has posted similar comments in the past. These points are without merit. The subsequent defamatory postings are relevant, new, and bear importantly on issues in the s.140 application.

M. Failure to Respect the Litigation Process

[190] Examples of this conduct are legion in the record. As noted above, judges of this court have previously characterized Ms Atas' conduct as an abuse of process. In her first action against Peoples Trust (**10-CV-411415**), the statement of claim is obviously an abuse of process, seeking to litigate issues properly dealt with in the mortgage enforcement proceedings and raising a host of baseless allegations in connection with those proceedings. Peoples Trust advised Ms Atas that it intended to move to strike the pleading. In the face of that information, with a date in civil practice court pending to schedule the motion to strike, on December 30, 2011, Ms Atas noted Peoples Trust in default. Peoples Trust takes the position that, in civil practice court on January 11, 2012, Low J. advised Ms Atas that the noting in default was improper.[189] On January 19, 2012, McEwen J. declined to schedule Peoples Trust's motion to

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[188] There was reference in the materials to prior internet defamation – and this evidence had been referenced to some extent in the application materials. The evidence of prior postings – and the injunction in place in the first Defamation Action – were necessary context for the evidence of the postings made in 2015 and 2016 among other things, the similarity in the prose and the substance of the allegations made it clear that it was probable Ms Atas had posted them.

[189] Endorsement of Justice Low dated January 11, 2012 (unreported). Ms Atas denies that she was told this by Low J.: further supplementary affidavit of Nadire Atas, para. 25. Ms Atas notes that the information about the appearance before Low J. is "contentious hearsay" and argues that it should not be admitted into evidence. It is provided to Ms Perri on information and belief of Christina Wallis and thus is admissible unless truly contentious. However, it is difficult to resolve a conflict in the evidence on this point given that Ms Wallis did not submit to cross-examination, Ms Perri was not present in court and thus has no personal knowledge and the endorsement of Low J. does not include the impugned advice of Low J. As a matter of common sense, it is probably true – it is the sort of thing an experienced judge in scheduling court would say, and it reflects what McEwen J. endorsed on January 12th. Little turns on this point, given the endorsement of McEwen J. of January 12th (which should have put Ms Atas on notice that her position was unreasonable) and then the decision of Hainey J. which is premised, in

strike until the default had been set aside, but also noted that such a motion (to set aside the noting in default) should be cured as soon as possible. Ms Atas was uncooperative in scheduling a motion to set aside the default, including insisting on an appointment before McEwen J. to settle his routine order.[190] The motion came on finally on March 29, 2012, at which time Hainey J. ordered that two notings in default by Ms Atas be set aside with costs against Ms Atas of $1500 per motion (total of $3000).[191] It is the exception, rather than the rule, that costs are awarded against a responding motion when setting aside a noting in default: only where a responding party has acted unreasonably or abusively of the court's process is such an order made. The notings in default were a waste of time and resources and are typical of Ms Atas' vexatious approach to litigation.[192]

[191] The injunctions in the defamation proceedings provide a microcosm of Ms Atas' view of the litigation process. For her, it is indeterminate and contingent. A decision is always subject to challenge. And once a decision is challenged, it is no longer effective.

[192] I ordered an interim injunction in January 2016. Over the course of the following two months I gave directions for exchange of materials for the motion for an interlocutory injunction and to complete the pleadings. After a "sharp exchange" between the court and Ms Atas about her studied non-compliance with scheduling orders, Ms Atas stated that "she might seek to vary or set aside the interim injunction."

[193] The interim injunction was an interlocutory order, initially in place for a short period, and then extended until final disposition of the motion for an interlocutory injunction. The interim injunction could only be appealed to Divisional Court with leave from that court. A motion for leave to appeal had to be brought within seven days of the order for an interim injunction.[193] Ms Atas was represented by counsel at the time the interim injunction was ordered. Ms Atas' suggestion, months after the fact, that she might seek to vary or set aside the interim injunction reflects her deeply held belief that all orders are indeterminate and subject to challenge, no matter how much time has passed since the order was made.

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respect of the costs disposition, on Ms Atas having acted unreasonably and thereby driven up costs and caused delay unnecessarily.

[190] Endorsements of McEwen J. dated January 12, 2012 and March 7, 2012 (unreported).

[191] Endorsement of Hainey J. dated March 19, 2012. Ms Atas challenges the evidence of Cristine Perri, on information and belief from Christina Wallis, that Ms Atas told McEwen J. that she would oppose setting aside the noting in default. This evidence is admissible on information and belief, and in this instance I prefer Ms Perri's evidence. If Ms Atas had consented to the setting aside before McEwen J., he could (and surely would) have made that order without the need for a motion to be brought. Ms Atas did oppose the motion before Hainey J. (and in her further supplementary affidavit sworn May 15, 2015, para. 25 persisted in her position that she was entitled to note Peoples Trust in default in the face of its pending motions to strike her statements of claim).

[192] I note that in a closely case managed process, such an issue would not require delay for such a motion: the order could be made the first time the issue arose without the need for a formal motion unless there was some articulable basis on which the noting in default might not be set aside. Proceedings involving Ms Atas need this kind of judicial oversight.

[193] R.62.02(2).

[194] Ms Atas has failed to follow numerous court orders. So far as I can tell from the record, she has not paid a single costs order made against her (and there have been many). In the case management proceedings before me, she ordered numerous expensive transcripts, the utility of which were not apparent, but failed to pay a costs order I made against her for $1000. Her explanation – that she cannot afford to pay the costs order – rings hollow when she is prepared to spend money for unnecessary transcripts.[194] I accept that Ms Atas may not be able to pay all the costs awards against her; I do not accept that she has not been able to pay any of them.

[195] Ms Atas was subject to the First Defamation Injunction when she made the statements that are the subject of the Current Defamation Proceedings. Some of the impugned statements are about persons who are protected by the First Defamation Injunction. The issue of whether Ms Atas committed contempt of court in connection with the Current Defamation Proceedings is before Pollak J. and has yet to be decided. However that proceeding may be decided, however, it is evident that Ms Atas breached the First Defamation Injunction, providing further evidence that she is ungovernable; whether her breach amounts to a contempt of court is for Pollak J. to decide (along with the other contempt allegations in that proceeding).[195]

[196] Ms Atas' proceedings have been stayed during the case management process, originally by Stinson J., and subsequently (and repeatedly) by me. Ms Atas has disregarded these stays repeatedly:

(a) On April 15, 2014, she served requests to inspect documents in **10-CV-411415** and in **11-CV-429180**.[196]

(b) On March 25, 2015, she served a Rule 15.02 demand on Blair Rose and Raymond Stancer in connection with their retainer a decade earlier in the Gomes/Kelly Mortgage Action.[197]

[197] Early in her cross-examination Ms Atas was asked her understanding of an order under s.140. She answered:

> Well, it's a very severe order. I know that it is rarely granted and it is granted in exceptional circumstances and it is granted for actions where people have issued claims where the Courts have already made a final determination on the action

[194] It subsequently turned out that Ms Atas wished to use the transcripts to bring a recusal motion on the basis of bias. This, of course, she was entitled to do. However, it is vexatious for her to spend all of her resources on such motions, driving up the costs of opposing parties, when she is not prepared to pay costs orders made against her.
[195] On this application, questions are decided on a balance of probabilities. My findings cannot and do not bind Pollak J. in the Contempt Proceedings where the standard of proof is beyond a reasonable doubt.
[196] See Exhibit "127" to the Affidavit of Cristine Perri sworn September 23, 2014.
[197] Supplementary affidavit of Nadire Atas sworn May 1, 2015, para. 14.

> and they have just issued claims afterwards, and that is not the case here, is that there is no final determination of my actions.[198]

There are three problems with this answer. The first is that three of the underlying actions have been decided on a final basis: the Gomes/Kelly Mortgage action and the two Peoples Trust Mortgage Actions. The balance owing on the mortgages in the Peoples Trust Actions may not have been decided (in respect to mortgage enforcement costs), but the actions have been decided, the security executed and the debts paid. The second problem lies in Ms Atas' partial understanding of the s.140 application. She has confused a s.140 application with a motion under Rule 21. When asked what she thought she had to show in this application, Ms Atas responded:

> It is not plain and obvious that the actions cannot succeed and for which no reasonable person could reasonably expect to obtain relief.[199]

This is a basis for finding someone vexatious, but not the only basis, as is shown in the review of the law, above. Bringing duplicate claims is another. Litigating arguable claims vexatiously is another. Litigating arguable claims on unarguable bases is another. Failing to follow the rules, breaching court orders, failing to pay costs orders, obstructing or abusing the court's process, all of these can also be bases for a finding that a litigant is vexatious.

[198] Third, Ms Atas does not understand that the principle of finality does not just extend to the very claim made in a prior proceeding. It applies to all related claims inconsistent with the finding in the prior proceeding – another way of stating the principles of issue estoppel and abuse of process which bar vexatious follow-on proceedings. Many of Ms Atas' claims appear to be precisely these, and at times she has recognized this. In a letter to Stinson J. dated September 23, 2014 (the purpose of which was to allege further grounds of bias against Stinson J.), Ms Atas wrote:

> Court action no. **CV-04-279726**… is the underlying matter…. It is closed and to reopen it requires a Rule 59.06 motion…. For clarity, the basis of the attached Court File No. **CV-14-504825** is that fraud was committed in the underlying Court action no. **CV-04-279726**.[200] [emphasis added]

On its face, this comment acknowledges that the 2014 action is a collateral attack on the 2004 judgment. If Ms Atas can persuade a judge to set aside the 2004 judgment, her remedy is in the 2004 action. If she cannot persuade a judge to set aside the 2004 judgment, then that

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[198] Cross-examination of Nadire Atas, June 3, 2015, p.23, Q.95.
[199] Cross-examination of Nadire Atas, June 3, 2015, p.27, Q.118.
[200] Letter from Ms Atas to Justice Stinson dated September 23, 2014, Exhibit "201" to the affidavit of Cristine Perri, Record, p.1866.

judgment is final and may not be attacked as "fraudulent" in follow-on proceedings like the 2014 action.

[199] Fourth, Ms Atas believes that the finality of a court order is in question just because she says it is. This was captured best in a question from Mr Napal during cross-examinations, where he suggested that "this is a live issue between the parties that has not been determined yet, because there has been no motion to set aside."[201] Ms Wallis, responding counsel, correctly responded that "[i]t was determined by Justice Lederer in giving the judgment in this matter." A judgment decides, on a final basis, all the questions necessary to decide it, and its finality is not brought into doubt by someone saying that she wishes to bring a motion to set the decision aside. The issue on a motion to set aside or vary is whether there are grounds sufficient to warrant changing a final judgment of the court – and the test is not whether there could be a basis on which to doubt the order's correctness. The test to re-open a matter that has been concluded finally is a stringent one – were it not so, the principle of finality would be meaningless, and matters would be subject to doubt until the parties agreed that they had no further bases on which to challenge or disagree with the order. That is just not how litigation works.

[200] This problem seems to go back to the very start of these conflicts, and to apply not just to court orders, but to agreements to which Ms Atas is a party. Ms Atas attaches to her affidavit a letter from her solicitors to Ron Hatcher dated December 5, 2003. By this letter, she advises Mr Hatcher, solicitors for the lender on the Gomes/Kelly and Hatcher mortgage transactions:

> We are advised by our client that she has filed a complaint with the Law Society of Upper Canada in respect to your conduct in this matter and the conduct of the mortgagee.[202] We are also advised that she filed a complaint with the Financial Services Commission.[203]
>
> We are also advised by our client that she has stopped payment on the November and December mortgage payments.[204]

Ms Atas intimates, without providing details, that she stopped payment on principle. This intimation is belied by subsequent events, where she was at pains to delay matters in order to refinance the property, which, eventually, she did. However, this intimation is consistent with her approach to court orders: having objected to them she seems to feel they are no longer authoritative or binding upon her. Similarly, here, the intimation suggests that because she had raised some sort of objection, she had an excuse for not making mortgage payments.

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[201] Cross-examination of Cristine Perri, July 15, 2015, Q.4.
[202] The letter does not state what "conduct" is the subject-matter of this complaint.
[203] The letter does not state about whom or about what the complaint was made to FSCO.
[204] The letter does not state why Ms Atas has placed a stop payment on the mortgage payments. Exhibit "3" to the affidavit of Nadire Atas sworn May 1, 2015.

N. Bizarre and Uncivil Behaviour to Opposing Parties

[201] The defamatory publications are bizarre and uncivil conduct by Ms Atas towards adverse parties and lawyers. This kind of conduct has surfaced in many different ways over the years. The following examples are illustrative.

[202] In September 2012 the parties were scheduled to argue a motion before Stinson J. Stinson J. had appointed *amicus curiae* in respect to a different motion – the motion to remove the PGT as litigation guardian for Ms Atas – which was not heard until January 2014. Stinson J. was concerned that Ms Atas not misunderstand and expect that *amicus* would act as her lawyer or that *amicus* or other counsel would be provided for her at public expense. Ms Atas advised Stinson J. that Raj Napal would be attending on her behalf for the September motion only – and that Mr Napal was not retained as counsel on the proceeding itself. She asked Stinson J.'s permission for Mr Napal to attend and make submissions on her behalf. Stinson J. agreed to this[205] but in so doing made it clear that Mr Napal would not be doing so as *amicus curiae* and that the court was not arranging to pay Mr Napal for his services.

[203] Christina Wallis, counsel for Peoples Trust on the motion pending before Stinson J. in September 2012, corresponded with Ms Atas about Mr Napal's involvement as counsel on the September motion. The exchange of emails went as follows (all on September 6, 2012):[206]

(i) Ms Wallis to Ms Atas (10:51 am): "Will Mr Napal be representing you on the motions on September 12, 2012. If you fail to answer my question, I intend to contact Mr Napal to inquire as to whether he is representing you.

(ii) Ms Atas to Ms Wallis (10:57 am): "Mr Napal is not on the record and you are not to contact him. Mr Napal will appear on September 12, 2012 at the Motions and everything can be raised with Justice Stinson."

(iii) Ms Wallis to Ms Atas (11:27 am): "If you have retained Mr Napal to represent you on the September 12, 2012 motions, I have every right to contact him to inquire as to whether he will be delivering any further motion materials."

(iv) Ms Atas to Ms Wallis (11:35 am): "Mr Napal has not been appointed by Justice Stinson as an amicus. I have not retained Mr Napal. Mr Napal has kindly agreed to appear on September 12, 2012, but only with Justice Stinson's permission. Justice Stinson has granted permission. Mr Napal is not on the record and even with Justice Stinson's permission to appear,

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[205] It is now routine for the court to give audience to counsel engaged for only one step in a piece of litigation in recognition of the difficulty many parties have funding counsel for the entire proceeding.

[206] Exhibit "188" to the affidavit of Cristine Perri sworn September 24, 2014, Record pp. 1750-1762.

will not be on the record. Read Justice Stinson's letter dated September 4, 2012. You or your office do not have my permission to contact Mr Napal. All issues can be raised on September 12, 2012 with Justice Stinson."

(v) Ms Wallis to Ms Atas (11:40 am): "If Mr Napal is representing you on September 12, 2012, I have every right to contact him and I intend to do so."

(vi) Ms Atas to Ms Wallis (11:45 am): "Mr Napal has not been retained by me or appointed by the Court. If you contact him I will… call the Law Society of Upper Canada and file an emergency complaint. The issues are contentious. You are not to contact Mr Napal. You are not to try to influence Mr Napal on the issues."

(vii) Ms Wallis to Ms Atas (11:47 am): "If Mr Napal is representing you in any capacity, then he has been retained by you. I have contacted Mr Napal for the purposes of confirming that he will be representing you at the September 12, 2012 motions and inquiring as to whether he will be delivering any motion materials on your behalf. To date you have not provided us with Motion Records or Factums. You have only emailed us Notices of Motion and four Affidavits."

(viii) Ms Atas to Ms Wallis (11:58 am): "Your office has received the Motion Record in electronic form, as I have received your motion material from your office, to date. I will file a complaint with the LSUC and raise these issues with Justice Stinson. Mr Napal has not been retained by me or appointed by the court and will be appearing on September 12, 2012, with the permission of Justice Stinson. Your office has a history of using your position as Officers of the Court to mislead Judicial Officer[s], Brokerages, Sheriff's Officers and other Counsel. I have sworn an affidavit to this."

Ms Wallis was right and Ms Atas was wrong on the disputed issues in this exchange. But that is not the point here. When Ms Atas was unable to persuade Ms Wallis to desist from her planned course, she threatened her (with a complaint to the LSUC) and then abused her (saying essentially "your office has a history of acting unprofessionally and unethically"). To understand what this is like for a recipient such as Ms Wallis, multiply this by the numerous exchanges that she has had with Ms Atas over the years.

In another example, in an email to Ms Wallis on April 9, 2012, Ms Atas wrote:

> You were called to the bar in 2006 after years of being a law clerk. Your legal reasoning verges on the brink of the politically incorrect term "retarded".[207]

And in another email to Ms Wallis on April 9, 2012, Ms Atas wrote:

> You need to hand in your licence as I truly think you are ethically and intellectually challenged.[208]

In another email to Ms Wallis, on April 12, 2012, during a squabble over production of documents, Ms Atas wrote to Ms Wallis:

> I was not served with the documents I am requesting from all of my defendants. Please stop trying to cover up your numerous fraudulent conduct.[209]

On September 4, 2012:

> Were you again trying to mislead the court with the Standard Charge Terms et al?[210]

September 16, 2012:

> … I have come to the conclusion that Michael Mitchell's legal advice, your law firm's conduct and your client's conduct will be the subject of negligence case law for years to come.[211]

Ms Wallis is obliged by professional standards to respond to this sort of thing professionally, but this goes well beyond what any lawyer should have to endure in day-to-day dealings with the other side. I have noted testiness from Ms Wallis towards Ms Atas (and indeed from other opposing parties towards Ms Atas), but in all the circumstances I am surprised that they have all managed to maintain their professional composure in the face of such ongoing gross incivility. To be clear, this is atrocious, unacceptable behaviour.

[204] Judges do not like dealing with petty squabbles between the parties. Name-calling generally falls into this category. Frankly, judges have more important work to attend to; it is extremely wearing, and distracting, and generally does not assist the court in doing its primary work, which is to decide underlying conflicts on a final basis. I have generally declined to engage in this kind of supervision of the parties during case management and trusted to them to rise above it all. However, one merit of case management is that the presiding judge can keep a

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[207] Exhibit "221" to the affidavit of Cristine Perri sworn September 23, 2012, Record, p.2051.
[208] Exhibit "221" to the affidavit of Cristine Perri sworn September 23, 2014, Record, p.2056.
[209] Exhibit "221" to the affidavit of Cristine Perri sworn September 23, 2014, Record. p.2052.
[210] Exhibit "188" to the affidavit of Cristine Perri sworn September 23, 2014, Record, p.1740.
[211] Exhibit "188" to the affidavit of Cristine Perri sworn September 23, 2014, Record, p.1775.

firm handle on this sort of behaviour, make it clear that professionalism and courtesy are required, and then intervene when necessary to preserve decorum, both inside and outside the courtroom. This is necessary in litigation involving Ms Atas and is another reason why her designation as "vexatious" is warranted.

O. Absurd Damages Claims

[205] As stated by Morgan J. in *Yae* v. *Park*, "nothing says vexatious like a one billion dollar claim against opposing counsel for defending their client's rights."[212] If there is a factual basis for any of the claims advanced by Ms Atas, it would seem that they would establish no more than a claim for improper commissions (something equal to or less than $21,500), an accounting for mortgage enforcement costs and interest accruals on the Peoples Trust mortgages (claims that I understand may now total roughly $200,000, but which probably have far less truly in issue), and theoretically for the loss of some personalty of indeterminate value. The claims of the respondents started out in the hundreds of thousands of dollars – far in excess of any likely value of those claims – and then progressed to a series of claims for upwards of $3 million, to, most recently, claims for $40 million. Ms Atas' inflated damages claims are vexatious.

P. Failure to Meet Deadlines

[206] While Stinson J. was case managing proceedings, there were numerous instances of Ms Atas failing to comply with his directions:

(a) March 26, 2014: direction to deliver consent orders to set aside administrative dismissals by April 4, 2014. This was not done.

(b) July 22, 2014: second direction to deliver consent orders to set aside administrative dismissals by July 31, 2014. Again, this was not done.

(c) March 26, 2014: provide all counsel with any proposed amended pleadings in all actions by June 30, 2014. This was not done.

(d) March 26, 2014: take out formal order of Stinson J. dated January 30, 2014 removing the PGT as litigation guardian. This was not done.

(e) July 22, 2014: second direction to deliver consent orders to set aside administrative dismissals. This was not done.

(f) July 22, 2014: provide opposing counsel with copies of all newly issued notices of action and statements of claim. This was not done.

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[212] *Yae* v. *Park*, 2013 ONSC 1331, per Morgan J., para. 14.

[207] While Mr Napal was on the record for Ms Atas in the s.140 application, there were multiple instances of materials being delivered late or without notice at case management conferences. Most of these problems were within the usual "parry and thrust" of civil litigation, counsel's busy schedule and competing demands on his time. While I would have preferred if these had not occurred, I did not view them as conduct that was vexatious, though it was certainly annoying and made it difficult to set and maintain a reasonable schedule. One example illustrates the problem:

(a) At a case conference on March 27, 2015, Ms Atas asked to schedule motions to set aside or vary previous orders (including the judgment of Pitt J. from 2005) on the basis of fresh evidence. All the underlying proceedings were stayed pending decision on the s.140 application and so I declined to schedule these motions. However, I did permit Ms Atas to deliver further evidence on the s.140 application to address these issues, because I considered that her future litigation plans were relevant to the application. I gave Ms Atas a deadline of April 10, 2015 to deliver supplementary responding materials. I set this date – as I set most dates, after confirming with the parties that the deadline was a reasonable one that they could meet. I then adjusted the schedule of the application thereafter, with a timetable to see the matter ready to proceed on the date fixed for argument of it on the merits.

(b) Ms Atas did not meet the deadline of April 10, 2015. She had still not delivered the supplementary responding materials at the time of the next case conference on April 27, 2015. Instead of refusing to permit her to elicit this additional evidence, I set a new deadline of May 1, 2015 for delivery of these materials. Ms Atas did not meet this deadline. Her counsel emailed her supplementary affidavit to opposing counsel on May 4, 2015 (without exhibits).[213] The following day, May 5, 2015, Ms Atas' counsel emailed copies of the exhibits to opposing counsel.

(c) As was almost invariably the case, Ms Atas did not seek an extension prospectively. Nor did she have much of an explanation for her default.

(d) This may not seem a big deal – but when it is multiplied by the number of times Ms Atas failed to meet deadlines, and the extraordinary overall delay in the underlying proceedings, a pattern emerges. Deadlines, for Ms Atas, are aspirational at best. The consequence is that schedules have to be varied, sometimes motions dates are lost, and opposing parties must respond on Ms Atas' timetable rather than the one that has been stipulated by the court.

[208] After Mr Napal left the case, Ms Atas' compliance with court-ordered deadlines worsened markedly. These deadlines were almost always set after consultation with the parties

[213] The affidavit is dated May 1, 2015, though it was not served until May 4, 2015.

and with their assurance that the deadlines were manageable for them. My endorsement of April 12, 2016 in the Current Defamation Proceedings captures the change in tone:

> Ms Atas has failed to meet the prior deadlines for responding materials on the interlocutory injunction on Feb 12/16, Mar 4/16 and Apr 1/16. She argues that her current delay is to avoid waiver of her concerns that she said should lead this court to recuse itself from her matters. This argument is without merit. Ms Atas assures me that she can deliver her responding materials by Apr 15/16. I will give her to Apr 22/16. As I have indicated to her, delay in the motion will not prejudice the moving parties materially since I have granted an interim injunction. However, constantly shifting schedules place[s] an undue burden on the other parties and the court. The repeated non-compliance requires sanction. Ms Atas shall pay costs of the scheduling issues to the plaintiffs fixed at $1000 + HST, payable within 14 days.

[209] The endorsement captures several features of Ms Atas' conduct. First, she considers that when she raises some objection to something the court has done, by virtue of that objection she is no longer required to observe the court's directions. Ms Atas advised that she wished to bring a recusal motion. She had not yet done so. And yet, by her logic, she not only was not bound to follow the deadlines ordered by the court, but that, somehow, if she did comply with the deadlines, then she would somehow waive her allegations of bias. By this thinking, if it was true, Ms Atas would be free from obligation to follow court orders merely by stating that she intended to allege bias in a motion to be brought at some point in the future. Also by this thinking, if it was true, she would have waived almost all of the allegations of bias she pursued.

[210] This conduct continued in respect to her proposed motion that I recuse myself by reason of bias or reasonable apprehension of bias. She advised that she intended to bring this motion shortly after Mr Napal ceased his representation of the respondents. She was directed several times that simply saying that she intended to bring a motion would have no effect on the litigation process. She would have to serve and file her motion materials if she wished to pursue the motion. Once she had done that, then there would be a case conference for directions on how the recusal motion would proceed. After repeated statements from Ms Atas that she would be bringing the motion, on June 8, 2016. I set a deadline of July 15, 2016, for Ms Atas to deliver her recusal motion materials. Still, she did not do so.

[211] On June 8, 2016, I gave a final scheduling order respecting the motion for an interlocutory injunction. I directed that Ms Atas deliver any further motion materials on which she intended to rely by July 31, 2016. I directed that she deliver her statement of defence by June 30, 2016. She did not deliver any further materials or her statement of defence by the deadlines. The injunction motion was scheduled for hearing on September 6, 2016. A week before that, Ms Atas requested an adjournment of the motion so that she could file further evidence and a factum. She provided no explanation as to why she had not met the deadlines for these steps directed on June 8.

[212] At the return of the interlocutory motion on September 6, 2016, Ms Atas sought to file materials she had brought with her, being further responding materials and a recusal motion. After hearing argument on the point, I refused to permit Ms Atas to file these materials late or to argue for recusal without a proper motion before the court:

> Ms Atas delivered this affidavit this morning and sought to file it with the court at the start of these proceedings. The affidavit covers a number of topics, including an allegation of reasonable apprehension of bias against me, an issue Ms Atas has said she intended to pursue in respect to all matters before the court.
>
> On June 8th, 2016, I imposed a deadline of July 31, 2016, for any further responding materials from Ms Atas. Ms Atas has no explanation for failing to meet this deadline. If I granted Ms Atas' request, I would have to permit the moving parties to file responding materials and a supplementary factum.
>
> Ms Atas has shown that she will not pay costs awards. A $1,000 award made in favour of the plaintiffs remains unpaid, and so there is no reason to believe Ms Atas would pay an award of costs for costs thrown away if I granted the adjournment.
>
> Ms Atas argues that I should admit the affidavit because it is relevant and necessary for her argument. That submission does not address the obvious unfairness to the plaintiffs of permitting this material to be filed now.
>
> I am concerned about the portion of the materials that deal with reasonable apprehension of bias, and of course the court does not wish to frustrate the efforts of a litigant to make such an argument. However, I directed Ms Atas to file her motion materials on this issue by July 15, 2016. She did not do so. Permitting her to raise the issue in her materials today with no chance for the respondents to respond is simply unfair.
>
> Ms Atas may still move for my recusal on the basis of reasonable apprehension of bias, but she will not be permitted to argue this point today without a proper motion before the court.

Q. Ms Atas' *Rowbotham*[214] Application

[213] Ms Atas' application for a *Rowbotham* order is not inherently vexatious. Ms Atas did not succeed in this application.[215] There is one point, however, worthy of note. As stated by Pollak J., the second requirement to obtain a *Rowbotham* order is to establish that the applicant "is

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[214] *R.* v. *Rowbotham* (1988), 41 CCC (3d) 1 (Ont. CA).
[215] *Atas v. A.G. (Ontario)*, 2017 ONSC 6029.

indigent and unable to privately retain counsel to represent" her at trial.[216] Ms Atas, who is well versed with court proceedings, apparently filed no evidence to support her assertion that she is unable to pay for a lawyer. Pollak J. noted:

> Although the court provided Ms Atas the opportunity to give oral evidence on these requirements, she did not have any documents with her in court to support her evidence that she cannot afford a lawyer.

[214] There is no evidence, one way or the other, of Ms Atas' ability to pay costs awards, other than her bald statements. The fact is that she has not paid the one modest costs award made by this court, leading me to conclude that she either cannot or will not pay any costs awarded against her. Given the history of Ms Atas' litigation, her adversaries could well conclude that any efforts by them to enforce costs awards would likely cost them as much, or more, than their likely recovery from Ms Atas.

[215] Ms Atas does not litigate like a person of modest means. She contests almost everything. I am satisfied that she does so on the basis that she is confident that she will never have to pay costs awarded against her, and thus she is impervious to the effect of potential negative costs awards, one of the bases on which most litigants conclude that it is in their interests to litigate reasonably and proportionally. Indeed, Ms Atas' litigation style can be characterized as consistent with a litigant who feels that she has nothing left to lose and thus need not be constrained by principles of reasonableness and proportionality.

[216] The *Rowbotham* application could have been a reasonable step to take. But Ms Atas' failure to tender evidence on a crucial point on the application rendered it vexatious. It delayed the hearing of the Contempt Proceedings on the merits by many months, put the Province to needless expense, and was bound to fail in the absence of proper evidence. This application is an example of Ms Atas litigating a tenable claim vexatiously.

R. Eighth Round: Further Action Brought by Ms Atas

[217] During case management, Stinson J. directed that Ms Atas take no further steps or proceedings outside the case management process. Notwithstanding this directive, in 2014, Ms Atas commenced six new proceedings outside the case management process. They were:

(a) **14-CV-507409**, issued against David Bresver, Mr Bresver's law firm, Peoples Trust and Michael John Mitchell. A notice of action has been issued but no statement of claim. The notice of action contains no particulars.

(b) **14-CV-507421**, against David Bresver, Mr Bresver's law firm, Peoples Trust, Michael; John Mitchell, Mr Canizares, and the Chahals. In it Ms Atas claims $25

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[216] *Atas v. A.G. (Ontario)*, 2017 ONSC 6029, para. 15.

million for negligence plus $15 million for aggravated, "pecuniary" and exemplary damages.

(c) **14-CV-507402**, issued against Mr Steinberg and his law firm for $2 million;

(d) **14-CV-507414** issued against Seon Gutstadt Lash LLP, Benjamin Salsberg and Stanley Goodman for "negligence and other causes of action" arising out of the St George St Property. Ms Atas claims damages of $25 million, plus punitive and exemplary damages of $10 million.

(e) **14-CV-504825** issued against Mr Stancer, his law firm, Mr Rose, his law firm, Blair Coleman Rose and Scott Kelly for $25 million, plus aggravated, exemplary and punitive damages, as well as an order that the defendants return "the $292,000 obtained from David Bresver from mortgage proceeds of Peoples Trust Company on May 27, 2006."

(f) **14-CV-498399** issued against Sutton Group and others, including paralegals, for $4 million, alleging that they stole letters and made blackmail threats.[217]

[218] Bringing these proceedings in contravention of Stinson J.'s stay order was vexatious and is a further example of ungovernability. These proceedings, other than (c) and (f) appear to offend the finality principle and are vexatious for that reason as well.

S. Ms Atas' Response to the s.140 Application

[219] Ms Atas' response to the s.140 application demonstrates that she is a vexatious litigant. It is similar to the situation in *Dobson* v. *Green*, described by K.L. Campbell J. as follows:

> The vast majority of the respondent's affidavit is dedicated to reciting and establishing his current allegations of fraud and misrepresentation against the applicant, and his claims against some of the other defendants in his new action. These allegations include assertions of criminality, including intimidation and obstruction of justice, and references to random legal principles and platitudes of some apparent application.[218]

This is the essential nature of the underlying proceedings: challenges to authoritative decisions from the courts. The remedy for a judicial decision that a party considers wrong is an appeal, not endless follow-on litigation.[219]

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[217] It may also be that two actions brought by Ms Atas against Sutton Group Realty Systems were commenced in breach of Stinson J.'s direction (**12-SC-6446** and **13-SC-21972**).
[218] *Dobson* v. *Green*, 2012 ONSC 4432, per K.L. Campbell J., para. 47.
[219] *Niagara North Condominium Corp. No. 125* v. *Waddington*, 2007 ONCA 184, per Armstrong J.A., para. 25.

[220] Ms Atas' primary arguments in defence of the s.140 application are as follows:

(a) She argues that the final judgment in the Gomes/Kelly Action is wrong because:

(a) Mr Gomes never authorized the proceeding,[220]

(b) There is an outstanding mortgagee costs assessment from May 25, 2006,[221]

(c) Rather than being a single mortgage with a single set of penalties and fees, the mortgages were separated into three, with triple penalties and fees.[222]

She advises that she wishes to bring a motion under R.59.06 to set aside the judgment. She wishes to serve a demand for authorization under Rule 15 on the solicitors for the plaintiffs to address the issue of their authority to act for Mr Gomes. A letter from the LSUC to Ms Atas dated February 4, 2013 makes the following points: "You made Mr Gomes aware of the action against you in 2005. Despite this, Mr Gomes took no steps to be removed from the action or to change solicitors. It appears that Mr Gomes took no steps at all…. It may be that Mr Gomes was satisfied to permit his co-Plaintiff, Mr Kelly, to instruct" counsel.[223] Ms Atas says that she subsequently learned, in 2012 or 2013, that Mr Gomes did not know Mr Kelly.[224] Ms Atas knew about this issue back in 2005. She elected not to pursue it then. She cannot raise it anew because she gathered more information about it in 2012/13: it is awareness of the issue, not awareness of all the evidence in respect to that issue, that determines whether information is "fresh" and whether a limitations clock has begun to toll.[225]

(b) She notes that Tom Pires was convicted for operating as a mortgage broker without being registered as such as a result of a complaint she made to FSCO. The conviction (based

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[220] Affidavit of Nadire Atas sworn March 2, 2015, paras. 10, 18, 19. 24; supplementary affidavit of Nadire Atas sworn May 1, 2015, paras. 12-14, 15-20.
[221] Affidavit of Nadire Atas sworn March 2, 2015, para. 17.
[222] Affidavit of Nadire Atas sworn March 2, 2015, para. 25.
[223] Letter from Law Society of Upper Canada to Nadire Atas dated February 6, 2013, Exhibit "W" to the affidavit of Justin Anisman sworn September 30, 3014, p.2 (Record p.619).
[224] Cross-examination of Nadire Atas, June 3, 2015, pp. 83-109, QQ381-532. The cited passage is very long because of the fractious nature of the cross-examination. Ms Atas was aware of the issue in 2005 and in her cross-examination was trying to explain why her characterization of these events is "fresh evidence" some ten years later, as of the time of her affidavits in 2015.
[225] There are many possible explanations for Mr Gomes' reported statements around 2012/13: (a) the loan was from a different John Gomes; (b) John Gomes assigned the mortgage to someone else; (c) Mr Gomes has forgotten; (d) Mr Gomes was not telling the truth. And there may be other possible explanations. If the loan was not advanced by Mr Gomes, then who made the loan? Why did s/he do it in Mr Gomes' name? What difference would it have made to the respondents' obligation to repay the loan after it was made? Whatever the explanation may be, Ms Atas' position – that there was some sort of fraud involved – and that it would have relieved her of her obligation to repay the loan – seems improbable – which might explain her solicitor's advice to her at the time to drop the issue.

on a guilty plea) was on January 11, 2006.[226] This issue was the primary defence raised by the respondents in the Gomes/Kelly Mortgage Action and was rejected by Pitt J. and the Court of Appeal. It is not a basis on which to revisit that judgment now. Total fees and commissions on the Gomes/Kelly and Hatcher mortgages were $21,500, of which $19,000 were commissions. Any claim that Pires was not entitled to a commission is foreclosed by the judgment in the Gomes/Kelly Mortgage Action (Pires was a party to the counterclaim), and in any event would seem to now be long precluded by the *Limitations Act*. And these allegations would not be a basis for setting aside or varying the judgment in favour of the lenders.

(c) Ms Atas says that she received information on February 20, 2006 that Ron Hatcher and Rui Ruivo received "secret commissions" on the Gomes/Kelly and Hatcher mortgage transactions. These commissions came out of the overall fee and commission figure of $21,500, to which Ms Atas agreed.[227] It is not clear why Ms Atas would have an interest in how the fee and commission money was divided among those responsible for placing the loan. However, even if she does, any action on these commissions and fees would now be long precluded by the *Limitations Act*.[228] And these allegations would not be a basis for setting aside or varying the judgment in favour of the lenders.

(d) In respect to many of the claims she has commenced, Ms Atas acknowledges that her pleadings are deficient: "[t]his action… was drafted by me and… requires redrafting and amendment by counsel. I am not a lawyer and I understand the causes of action have not been properly pled."[229]

(e) Ms Atas continues to mischaracterize the issue of David Bresver's role respecting the St George Street Mortgage and the enforcement action respecting that mortgage. Mr Bresver did not act for Ms Atas in that transaction and she knows this full well.[230] As has also been noted above, the appearance at which this was said to be an issue was summary judgment before Lederer J., an order that was superseded by Ms Atas' decision to sell the

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[226] Affidavit of Nadire Atas sworn March 2, 2015, para. 21 and Exhibit "F". Further supplementary affidavit of Nadire Atas sworn May 15, 2015, paras. 35-42.

[227] Ms Atas challenges these fees and commissions outright and deposes that there "was a deficit" in mortgage proceeds on closing of $22,065.20" (supplementary affidavit of Nadire Atas sworn May 1, 2015, para. 5). This claim is foreclosed by the judgment of Pitt J. On Ms Atas' evidence, she knew these facts at the time of closing, "on February 20, 2003", and so this is not "fresh evidence" and the applicable limitations periods expired long ago.

[228] She has known about this issue since an email to her from her then counsel, David Brooker, dated February 20, 2006: Exhibit "G" to the affidavit of Nadire Atas sworn March 2, 2015.

[229] Affidavit of Nadire Atas sworn March 2, 2015, paras. 36, 39, 43.

[230] Affidavit of Nadire Atas sworn March 2, 2015, paras. 32-35.

St George Street Property herself. Notwithstanding these facts, Ms Atas not only continues to pursue this point, she characterizes it as "fraud".[231]

(f) Ms Atas mischaracterizes the issue of attorned rents. Peoples Trust takes the position that these rents were applied to building maintenance and property management costs once it was in possession of the St George Street Property. It was entitled to do this. An accounting for mortgage enforcement costs, including attorned rents (which are a credit against those costs), has yet to be completed. If anything has not been accounted for properly, then it can be taken into account when mortgage enforcement costs are fixed.[232]

(g) Ms Atas takes considerable issue with debt enforcement steps taken by Peoples Trust to collect its mortgage enforcement costs on the Wycliffe Property.[233] The balance owing may be in dispute, but what is not disputed is that Peoples Trust received no material payments as a result of its writs of execution and notices of garnishment. Ms Atas has sought repeatedly to have these enforcement activities terminated, largely without success (though Peoples Trust has, itself, withdrawn some if its enforcement steps). While I sympathize with Ms Atas' frustration at having writs and garnishments extant for so long, if she had cooperated to obtain swift assessment of the enforcement costs, then the quantum would have been resolved and problems with enforcement steps could have been addressed constructively. Certainly these matters, which have been the subject of court proceedings, are not a basis for follow-on proceedings.

(h) Ms Atas takes the position that "throughout a substantial period of the various litigations, I was mentally disabled and unable to respond to the various legal process brought by the parties to this application…. [T]hey also used my incapacity to their advantage when it

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[231] Supplementary affidavit of Nadire Atas sworn May 1, 2015, paras. 21 and 36; further supplementary affidavit of Nadire Atas sworn May 15, 2015, paras. 13-17. I note here that Cristine Perri deposed that the affidavit of Sharon Small did not state that Mr Bresver was Ms Atas' lawyer. Ms Atas, in para. 17 of her further supplementary affidavit, deposes that counsel for Peoples Trust provided Lederer J. with an affidavit from Sharon Small that said precisely the opposite. The affidavit of Sharon Small sworn November 27, 2008, at para. 5, describes Mr Bresver as Ms Atas' lawyer and attaches an email to Mr Bresver and Ms Atas. The paragraph is an obvious error: the attached email is sent by Peoples Trust to its borrower (Ms Atas) and its lawyer own (Bresver) explaining that Ms Atas would be delivering certain funds to him and to give him instructions about what to do. The affidavit is an obvious slip. In the commitment letter attached to the affidavit as exhibit "C", Mr Bresver is defined as "lender's solicitor". See Exhibit "I" to the affidavit of Nadire Atas sworn March 2, 2015. There is a client identification certification to Peoples Trust from Mr Bresver in which he identifies himself as solicitor for the borrowers for the purpose of attesting to their identity. This is not a certificate of independent legal advice, nor does it purport to be.

[232] Affidavit of Nadire Atas sworn March 2, 2015, paras. 43-47; further supplementary affidavit of Nadire Atas sworn May 15, 2015, paras. 3-6, 8-12.

[233] Affidavit of Nadire Atas sworn March 2, 2015, paras. 50-60. For example, Ms Atas sees something wrong in Peoples Trust filing identical writs of execution for the entire judgment in both Hamilton and Toronto. There is nothing wrong in doing this. The creditor is not permitted to collect more than the amount of the debt, from whatever source, but the creditor is entitled to pursue the full amount owed in multiple jurisdictions simultaneously. Similarly, a creditor may pursue multiple forms of enforcement (such as garnishments and writs of execution), seeking full payment of the amount owed from every source. These efforts may continue until the debt is paid.

was wrong for them to do so."[234] Stinson J. concluded that the mortgage enforcement costs assessed in May 2010 (leading to a Certificate of Assessment in August 2011) ought to be set aside. He made no finding that Peoples Trust acted improperly in proceeding as it did, but he concluded that it would not be fair to let the assessment stand. It will have to be done over. The period of her incapacity, as found by the court, began in July 2010. Concerns arose before judicial officers as early as April 2010. By November 1, 2010, Ms Atas took the position that she was capable of managing her own affairs and no longer suffering from legal incapacity. Peoples Trust takes the position that there never was legal incapacity or disabling mental illness, and none was ever found in any action to which Peoples Trust was a party.

(i) Ms Atas argues that none of the negligence actions she has brought have been decided on the merits. In only one (Atas v. Kagan Shastri, **07-CV-343745**) has there been exchange of documents and examinations for discovery.[235] When it has been pointed out to her that, as the plaintiff, she bears the responsibility for moving her proceedings forward, she responds that she has been incapable by mental illness (2007-2011) and then subject to stay orders from Stinson J. and latterly from me (2012 to the present).

(j) Ms Atas argues that she has to attack the judgments in the mortgage actions to try to mitigate her losses in her claims of solicitor's negligence – which is a roundabout way of acknowledging that the solicitor's negligence cases are follow-on claims premised on an argument that previous court orders are wrong.[236]

(k) Ms Atas seems to argue that the court should infer that some of the actions are not frivolous because the adverse parties have not brought, or tried to bring, motions under RR. 20 or 21 to have them dismissed.[237] Given that Ms Atas' proceedings were effectively in "suspended animation" (to coin a phrase from Stinson J.) from 2010 to 2014 by reason of the capacity issue, and thenceforth by reason of case management orders and the s.140 application, this argument has little foundation. A motion under RR. 20 and/or 21 is not a condition precedent to a s.140 application.

(l) Ms Atas makes claims against the Chahals – the persons to whom she sold the St George Street Property – that appear entirely frivolous. She alleges that they breached an agreement with her that she be permitted to stay at the property after August 5th when that issue was decided against her conclusively by the Landlord Tenant Board.[238] She argues that the Chahals breached a duty owed to her by purchasing the property while she was

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[234] Affidavit of Nadire Atas sworn March 2, 2015, para. 71.
[235] Supplementary affidavit of Nadire Atas sworn May 1, 2015, para. 2.
[236] Supplementary affidavit of Nadire Atas sworn May 1, 2015, para. 23.
[237] See cross-examination of Yan Wang on May 28, 2015, QQ. 152-166, pp. 44-48, for example.
[238] See, for example, Ms Atas' counsel's question presupposing this theory during the cross-examination of Yan Wang, May 28, 2015, Q.167, p.49.

> suffering from a mental illness – despite the obvious problems that if she had not sold to the Chahals, Peoples Trust would have closed its sale of the property for a price of $12,000 less than was paid by the Chahals, and in any event, this was a sale to which she agreed – and despite the obvious problem that the Chahals were arm's length purchasers for value and had no duty to inquire into or respond to Ms Atas' health issues.

[221] As can be seen from this list, Ms Atas rests her defence on the merits of her underlying grievances, and almost completely fails to respond to the evidence of her vexatiousness in advancing her claims.

6. Concluding Analysis

(a) The Impugned Conduct Has Been Persistent

[222] First, has Ms Atas' conduct been "persistent". In view of the facts recounted above, this question seems rhetorical. Three mortgage enforcement proceedings have spawned all these underlying proceedings, as well as numerous administrative proceedings at HRTO and LSUC. More than just persistent, Ms Atas has been relentless. The fact that many of these lawsuits duplicate claims in prior proceedings is eloquent evidence of persistence:

> Q: … You are swearing to this court that you started proceedings against lawyers that were duplicates of earlier lawsuits that you had started against those lawyers?
>
> A: Yes.
>
> Q.: … And that is vexatious, in your mind?
>
> A: No.[239]

[223] *Res ipsa loquitur.*

(b) The Impugned Conduct Has Been Without Reasonable Grounds

[224] During case management sessions, I noted to the parties that this was not a situation where all of the claims being asserted were inherently unreasonable at their core: it is not unreasonable, for example, to allege that terms of a loan agreement are unlawful and therefore unenforceable (one of the allegations that lies at the core of Ms Atas' position that she was wronged in the first round of mortgage proceedings). It is likewise not inherently unreasonable

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[239] Cross-examination of Nadire Atas, June 3, 2015, p.155, QQ874-875. Ms Atas' principled explanation for these anomalous answers is that lawsuits had been dismissed administratively and so she started fresh actions. When she was advised that the administrative dismissals could be set aside during the case management process, after the s.140 application had been decided, she concluded these fresh proceedings were not necessary and decided not to proceed with them: cross-examination of Nadire Atas, June 3, 2015, p.157, QQ889-890.

to take the legal position that the terms of the mortgages merged in judgments granted in respect to them, and that enforcement of the judgment is all that is left to the lender. And it is not inherently unreasonable to allege that one's lawyer was negligent in his services. But to sue everybody in sight, repeatedly, when things don't turn out as you'd hoped is not reasonable. To seek to litigate issues multiple times is not reasonable. To disobey court orders is not reasonable. To repeatedly miss deadlines without explanation is not reasonable. To sue opposing lawyers is not reasonable. To launch exorbitant claims is not reasonable. To bring multiple recusal motions is not reasonable. To harass, defame and abuse opponents is not reasonable. Ms Atas' explanation for this conduct is that she feels a sense of outrage that she has not received justice, as she understands it. These are not reasonable grounds for the impugned conduct; I find that the impugned conduct has been without reasonable grounds.

(c) The Impugned Conduct Is Vexatious

[225] As with persistence and unreasonableness, so with vexatiousness: a simple recounting of what has happened here is enough to establish that Ms Atas' conduct has been vexatious. Her conduct in spreading intemperate comments, insupportable on any reasonable version of the facts, makes it clear that her *modus operandi* is to cause damage – through litigation, professional complaint, and defamation.

[226] This is not a case where Ms Atas has a fixation on one particular person or institution. Almost everyone who gets involved in these matters, whether on her behalf or on behalf of an opposing party, is drawn into an ever-widening web of claims. Each new wave of claims seems to see an exponential jump in the damages claimed. Individual proceedings are litigated vexatiously, and then new proceedings are commenced against the same defendants.

(d) Conclusion

[227] I agree with counsel for the applicants that Ms Atas is a textbook example of the vexatious litigant who is obsessive about perceived past injustices and will not rest until all involved have been brought to account. Her continued vexatious conduct during the course of the s.140 application leads me to conclude that Ms Atas will not stop her vexatious ways unless restrained by the court. I find her vexatious within the meaning of s.140(1) of the *Courts of Justice Act*.

7. Additional Issues

[228] Ms Atas has raised numerous issues during the course of these proceedings, only some of which require reasons here:

(a) Ms Atas' allegations that I should recuse myself for lack of jurisdiction over the s.140 application, and that I should recuse myself from all her proceedings by reason of bias or reasonable apprehension of bias.

(b) Ms Atas' request to litigate the underlying proceedings and her request for an order striking portions of the applicants' affidavits in support of the s.140 application.

(c) Ms Atas' response to the motion to adduce fresh evidence.

A. Motions For Recusal

[229] Ms Atas has brought or has sought to bring many recusal motions. In 2011, she argued that Dr Hy Bloom should not be permitted to conduct a defence capacity assessment because he was biased. Master Muir rejected this allegation. In 2014, she sought to move for an order that Stinson J. recuse himself for reasonable apprehension of bias. In 2015 she sought to move for an order excluding 26 judges from hearing her matters. In 2015 she moved that I recuse myself from the s.140 application for want of jurisdiction (at which time, through her counsel, she expressly disavowed any allegation that I should recuse myself for bias or reasonable apprehension of bias). In 2016 she sought to move that I recuse myself for the same basis on which she had moved in June 2015, and in addition, on the basis of bias or reasonable apprehension of bias.

[230] At Stinson J.'s request, and at the direction of the Toronto Civil Team Leader, Himel J., I replaced Stinson J. as case management judge rather than putting the parties through the delay and expense of a recusal motion. Therefore Ms Atas' motion that Stinson J. recuse himself was never brought. I refused to permit Ms Atas to move for an order excluding 26 judges because such a motion was so obviously devoid of merit. I permitted Ms Atas to move that I recuse myself from hearing the s.140 application on the basis that I was precluded from doing so by reason of being the case management judge. I dismissed that motion on the merits on June 30, 2015 for brief oral reasons, which I elaborate below. I dismissed Ms Atas' motion that I recuse myself for bias or reasonable apprehension of bias on February 7, 2017, with reasons to follow (which are set out below).

[231] Ms Atas' many recusal requests are part of her pattern of vexatious conduct. The situation here is comparable to the situation addressed by Doherty J.A. in *Beard Winter LLP* v. *Shekhdar*:[240]

> It is important that justice be administered impartially. A judge must give careful consideration to any claim that he should disqualify himself on account of bias or a reasonable apprehension of bias. In my view, a judge is best advised to remove himself if there is any air of reality to a bias claim. That said, judges do the administration of justice a disservice by simply yielding to entirely unreasonable and unsubstantiated recusal demands. Litigants are not entitled to pick their judge. They are not entitled to effectively eliminate judges randomly assigned to

[240] *Beard Winter LLP* v. *Shekhdar*, 2016 ONCA 493.

> their case by raising specious partiality claims against those judges. To step aside in the face of a specious bias claim is to give credence to a most objectionable tactic.
>
> …. The moving party is certainly entitled to his own opinion about the adequacy of the reasons and the correctness of those (previous) decisions. However, the personal opinion of the losing litigant as to the quality and correctness of the court's decision counts for little when assessing a partiality claim. It is understandable that losing litigants sometimes firmly believe that the court got it all wrong. To jump from that conclusion to allegations of racism and corruption is irresponsible and irrational.
>
> The moving party's subjective opinion about the tone of my voice, my appearance and attentiveness during the proceedings cannot, standing alone, overcome the strong presumption in favour of judicial impartiality. His assessments are necessarily subjective. It is perhaps not surprising that a losing litigant takes offence with the tone or appearance of the judge delivering the decision against the losing litigant.
>
> A reasonable observer, in considering the allegations made by the moving party, would also take into account that this moving party has made similar allegations of serious misconduct against a great many people involved in the judicial process, including many judges. The moving party offers no evidence that any of the many allegations he has made have ever been made out to the satisfaction of anyone but himself.
>
> There is no air of reality to the moving party's allegations of bias. I did not recuse myself.[241]

[232] Once Mr Napal ceased acting for the respondents, Ms Atas advised that she wished to bring a motion that I recuse myself from her matters by reason of bias or reasonable apprehension of bias. She was directed to deliver her motion materials for this relief if she wished to pursue it, with a case conference thereafter to address how the issue should then proceed. She did not deliver motion materials. She did, however, continue to complain that I should recuse myself and to advise that she would be bringing her proposed recusal motion. Once the fresh evidence motions were decided, the supplementary record completed, and written submissions concerning that record were received, the s.140 application was completed and this court could proceed to write this decision. At a case conference on June 8, 2016, I provided Ms Atas with a deadline of July 15, 2016 to deliver her recusal motion, with a direction that a case conference be scheduled in August 2016 after these materials were delivered. Ms Atas did not deliver materials by the deadline.

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[241] *Beard Winter LLP* v. *Shekhdar*, 2016 ONCA 493, paras. 10-14.

[233] I am satisfied that a purpose of these recusal motions has been delay. When Ms Atas first raised the issue of recusal before Stinson J., he directed her to prepare a memorandum setting out the basis of her concerns. At the start of that memorandum, she wrote as follows:

> Once a party has raised bias or prejudgment, the court is without authority to make any orders that would affect the rights of the parties and it should be heard before a judge makes a further decision in the case affecting the rights of the parties.[242]

This statement is simply not true. But I accept that Ms Atas believed it was true – that is, that she believed that just by raising the issue in a case conference, progress in case management would have to cease until her concerns had been addressed. This is what happened during the s.140 application. When she was represented by Mr Napal, Ms Atas raised the issue of whether I, as the case management judge, could hear the s.140 application. When he raised this issue, Mr Napal expressly stated that he was not alleging bias or reasonable apprehension of bias. After the s.140 application had been argued on the merits in September 2015, after Ms Atas had published her voluminous defamatory postings on the internet, after I had granted an interim injunction in respect to those postings, and after I had ordered that evidence about the postings could be adduced as fresh evidence on the s.140 application, then Ms Atas stated during a case conference that she intended to bring a motion that I recuse myself from all her matters, including the s.140 application, because of bias or reasonable apprehension of bias stretching back to the start of my work as case management judge. I told her that she could bring such a motion, and that if she did I would then give directions for responding materials and the future course of that motion, but that in the meantime, until she delivered motion materials, matters would proceed.

(a) Case Management Judge Not Precluded from Hearing s.140 Application

[234] This issue was raised before me during the case management process in June 2015. I directed that it proceed by way of motion, which was argued before me on June 30, 2015. In a brief handwritten endorsement I dismissed the motion that I recuse myself from hearing the s.140 application because I concluded that the Rules do not preclude a case management judge from hearing a s.140 application on the merits, and that in the circumstances of this case, my hearing the application would promote the governing principles of the Rules.

[235] The date of argument of the s.140 application was set in March 2015, at which time I had ordered that I would hear the application myself on September 11, 2015. I reserved the date in my calendar. Ms Atas and her counsel, Mr Napal, did not object to this order or raise an issue that the Rules precluded my hearing the application on the merits. As I recall, all parties consented to this aspect of the order, though in fairness, a requirement for consent was not raised by anyone and so may not have been canvassed expressly. I considered that deciding the s.140

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[242] Affidavit of Justin Anisman sworn September 30, 2014, Exhibit "Z" (record p. 644).

application was my first major task as case management judge and did not consider that there was any bar to my doing so.

[236] Then Ms Atas raised this issue in June, shortly before the summer holidays, with the return date for the application still fixed for September 11, 2015.

[237] I directed that this motion be brought immediately, to try to save the return date for the application: as must be clear by now, the underlying proceedings have been delayed far too long. If I had concluded that I was precluded from hearing the s.140 application, there could still have been time to find another judge to hear the application in September. My decision on whether I could hear the s.140 application would be interlocutory, and so any party disagreeing with it would have time to bring a motion for leave to the Divisional Court, and for that leave motion to be decided before the return date in September.[243]

[238] When Mr Napal raised this issue with me, I asked him why he and his client should be permitted to raise it when it was, in effect, a motion to vary my case management order from March 2015, an order to which they had not objected and which they had not sought leave to appeal. His answer was that he had not thought of the point at the time, but that it had occurred to him later. I accepted this answer. However, though I did not know it at the time, the point had previously occurred to Ms Atas. She had raised it with Stinson J. in her memo setting out her grounds for his recusal in July 2014:

> As a case management Judge, Justice Stinson lacks jurisdiction to hear a section 140 application under the *CJA*, as an application under the *CJA* is a final order.
>
> > Rule 77.06(2) A judge who is directed under subrule (1) to hear all steps in a proceeding shall not preside at the trial of the action or the hearing of the application, except with the written consent of all the parties.[244]

If I had been aware of this submission to Stinson J. in July 2014, I probably would not have permitted Ms Atas to have raised this issue in June after having failed for three months to object to an order that I hear the application on the merits in June. Litigation is not supposed to be reiterative. Once a case management order is made, the case is supposed to then move forward

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[243] If such a motion had been brought, and if leave to appeal had been granted, then of course that would have led to a question about whether the s.140 application should be adjourned pending the appeal, whether it should go ahead in the face of the appeal (absent a stay order from the Divisional Court), or whether, at that point, it would have made more sense for another judge to hear the s.140 application. In fact Ms Atas has sought to appeal this decision – to both the Divisional Court and the Court of Appeal. These appeals were brought long after the time limits in which to do so. Timeliness of the appeals is apparently argued by Ms Atas on the basis that my refusal to hear the point again on October 21, 2016, October 31, 2016, November 18, 2016 and December 14, 2016 somehow deferred the running of the clock for the time to seek leave to appeal by more than eighteen months, from June 30, 2015.

[244] Affidavit of Justin Anisman sworn September 30, 2014, Exhibit "Z" (record, p, 644).

on the basis of that order; the time to challenge the order is at the time it is made or by way of appeal thereafter. And this has been a regular problem with Ms Atas, as a litigant: as a matter of course she seeks to undo steps in the litigation that have been completed, and her litigation plans currently involve trying to do precisely this in respect to mortgage actions that have been decided and where the properties have been refinanced (in the case of the Gomes/Kelly and Hatcher mortgages) or sold (in the case of the Peoples Trust mortgages). I have been at pains to be clear with Ms Atas that once orders are made in case management, they are no longer up for debate or discussion.

[239] Be that as it may, I was not aware that Ms Atas had raised this same argument a year previously (and so was unaware of it at the time of my case management order in March 2015). And as I indicate above, I "probably" would not have permitted the motion because it was too late. "Probably" but not certainly: Ms Atas raises the point as a matter of jurisdiction. If the court lacks jurisdiction, then jurisdiction cannot be conferred by consent (or by failure to object). And I do not doubt that the point came up at a case management meeting without notice – that is, I expect I probably simply assumed I would be hearing the application, and stipulated that this would happen when I fixed the date.

[240] As noted above, Ms Atas sought to argue this issue again in her 2016 recusal motion (which was argued on the merits in 2017). In my case management order of October 19, 2016, I ruled as follows:

> Ms Atas' motion raises two general reasons why she argues that I should recuse myself from the s.140 application (and her other litigation):
>
> (i) As the case management judge I should not hear the underlying application on the merits; and
>
> (ii) I have displayed a reasonable apprehension of bias against her.
>
> The first argument was raised by Ms Atas in 2015 and was the subject of a motion where I decided that issue against Ms Atas. It has been decided already and may not be relitigated now.
>
> The second argument is based on decisions I have made as the case management judge and comments attributed to me during case management conferences and motions.

[241] Ms Atas disagreed with my decision that I would not re-hear the question of whether I have the jurisdiction to hear the s.140 application in view of my status as the case management judge. She challenged that decision in unsolicited written submissions. My endorsement of October 31, 2016 addresses these submissions as follows:

> I have received further unsolicited submissions from Ms Atas in respect to my case management order of October 21, 2016. My Order of October 21, 2016 stands. Reasons shall be provided within my reasons on the s.140 application.

Ms Atas is not to make any further unsolicited submissions on this issue.

[242] This however did not prove to be an end to the matter. I received further unsolicited correspondence from Ms Atas in which she disagreed with my decision about the portion of her motion based on the Rules of Civil Procedure. My endorsement of December 14, 2016 addresses this issue as follows:

> I have received further correspondence from Ms Atas respecting the pending recusal motion. In it she advises that she expects to argue the merits of her recusal motion, not just on the basis of reasonable apprehension of bias, but also on the basis of Rule 77.06.
>
> I have already given directions on the Rule 77.06 issue. Those directions stand. Ms Atas will not be permitted to make submissions on this issue when the matter returns before me on February 7th. It has been decided already, and I have already decided that it has been decided already.
>
> Ms Atas has made it clear that she does not agree with my ruling on this point, but nevertheless she will have to accept that the ruling has been made and that that is an end to that particular point before this court.

[243] This point reflects Ms Atas' general approach to litigation. A point is not over until she has prevailed upon it. If she is unsuccessful, she brings the point up, again, and again, and yet again.

[244] Ms Atas brought the issue of the propriety of my being case management judge and hearing the s.140 application on the merits before me on June 2015. In dismissing that motion I held that, rather than being beyond my jurisdiction or foreclosed by the Rules, it was my duty, as case management judge, to hear the s.140 application.

[245] Ms Atas took my oral reasons to have only decided whether I "should" hear the s.140 application, and not whether I was precluded from doing so by the Rules. That is not how litigation works. First, my decision decided all issues that were raised before me – and the one issue that was raised before me was whether the Rules precluded my hearing the s.140 application. The very point Ms Atas sought to raise in 2016 was the basis of the 2015 motion. Second, a motion on an issue such as recusal must advance every basis on which the moving party relies for the relief sought. Thus, technically, the 2015 decision decided all bases available to Ms Atas at that time for seeking my recusal: she was bound to assert every ground available to her upon which she wished to rely. Thus the decision in 2015 decided the point under the Rules, and foreclosed any other theory for recusal that was available to that time – including bias.

[246] I did not restrict Ms Atas to allegations of bias or reasonable apprehension of bias arising after June 2015 for three reasons. First, it would be open to a litigant to argue that events prior to June 2015, in combination with events after that time, give rise to bias or reason. Second, Ms Atas has a very long history of suing her own lawyers – I did not wish to provide fodder for Ms Atas to sue Mr Napal for failing to raise the bias issue in June 2015. Third, although it is not

proper for a litigant to bring serial motions on the same issue, I considered it prudent to permit Ms Atas to raise any and all bases she believed that she had to allege bias or reasonable apprehension of bias, in order to deal with that issue completely. As noted by Himel J., quoted above, bias is a very serious allegation, and there is a strong presumption that judges will honour their oath of office and decide cases based on the evidence and the law.

[247] In respect to the merits of the R.77.06(1) issue, I can summarize my conclusion briefly:

(1) The Rules provide that the court can dispense with compliance with the Rules when it is in the interests of justice to do so (R. 2.01);

(2) Thus to the extent that R.77.06(1) precludes a case management judge from hearing an application, the Rule may be dispensed with where it is in the interests of justice to do so;

(3) It is in the interests of justice to dispense with the prohibition in the case of a s.140 application in the circumstances of this case. The underlying application is procedural in nature. That is, the substantive issue is whether the conduct of Ms Atas, in the court process, provides a basis for a s.140 order;

(4) The case management judge determines the process of the application and thus the extent of the record before the applications judge;

(5) In this case, none of my prior rulings in the case management process involved issues of credibility or findings of fact on the merits of the underlying proceedings or of the s.140 application. When I began as case management judge, the s.140 application was the first order of business. I have made no rulings in the underlying litigation, which is the subject-matter of case management.

(6) I did rule on the interim and interlocutory injunctions, after the s.140 application was argued. Given the related motion to adduce the internet postings as fresh evidence on the s.140 application, this was the efficient way to proceed.

(7) I did direct that the Contempt Proceedings proceed before another judge. This was not because I was precluded from hearing those proceedings, but because (a) the contempt issues are discrete and do not require a detailed understanding of the underlying proceedings or this application; (b) my docket was over-full; and (c) Ms Atas has a tendency to personalize adverse decisions, and, though this would not be reason to send the matter to someone else, by itself, I considered that it would not assist the ongoing case management process if it turned out that I found Ms Atas in contempt of my interim injunction order and then incarcerated her: any litigant might take all that a bit personally. I directed that these proceedings be heard by another judge, not because of bias or reasonable apprehension of bias, but on the basis of these practical considerations which guided my exercise of discretion.

(8) The result of the s.140 application would leave the applications judge in the best position to carry on as case management judge and (if the s.140 application was granted) as the judge best suited to discharge the supervisory function directed by the *Chavali* order often made in cases of this kind.

(9) Having two or three separate judges perform these roles (one to case manage before the application, one to hear the application, and one to supervise after the application (if the application is granted)) would involve unacceptable duplication of effort without any discernible benefit to the decision-making process, and would not be consistent with prudent allocation of judicial resources.

(10) There is no prejudice to any of the parties in the case management judge hearing the application in this case.

(11) Having a separate judge hear the s.140 application would likely have delayed the hearing of the application, possibly substantially, given the timing of the objection.

(12) In my view the guiding principle of the Rules requires that matters be decided to secure the just, most expeditious and least expensive determination of the application on its merits (R. 1.04(1)), in a manner proportionate to the complexity and importance of the issues (R.1.04(1.1)). These principles mandated that I hear the application.

(13) In any event, the question of whether I should preside over the hearing of the application was not a matter of jurisdiction, but of the proper interpretation and application of the Rules (ie a question of law).

Ms Atas subsequently raised the issue of the Court of Appeal's decision in *Royal Bank of Canada* v. *Hussain*.[245] Reflection on this case underlines the point about jurisdiction. In *Hussain*, the Court of Appeal held that a judge who has conducted a pre-trial conference cannot subsequently hear a motion for summary judgment in the same case, absent consent of the parties. In a pre-trial conference the parties are expected to disclose their settlement positions and the presiding judge is expected to help the parties settle the case (including offering his views on the underlying merits of the case, at least in some cases). Indeed, in ruling that the pre-trial judge could not hear the trial, Simmons J.A. distinguished between a judge performing a pre-trial function and a judge performing a case management function by quoting with approval from the Osborne Report as follows:

> I recognize that this rule is intended to protect settlement discussions at pre-trial. In complex cases, it may be advisable to separate the settlement and trial

[245] *Royal Bank of Canada* v. *Hussain*, 2016 ONCA 637.

> management parts of the pre-trial so that a pre-trial judge dealing with trial management issues may serve as the trial judge. In any event, I recommend that rule 50.04 be amended to permit the pre-trial judge to serve as trial judge, where the parties consent. Virtually all those consulted saw no impediment to the trial judge dealing with motions and trial management issues, similar to what arbitrators do in arbitration proceedings. Having the trial judge involved earlier in long complex cases will, in my view, enhance the efficiency of the process.[246]

If I had pre-tried or mediated the case, then on the authority of *Hussain* it would have been an error in law for me to hear the application, but not a lack of jurisdiction.

[248] There were no principled reasons why I should not have heard the application and strong practical reasons why I did so. In my oral reasons I put my conclusion in stronger terms. I concluded that, not only did I have jurisdiction, but also I had a duty to hear the s.140 application. I am still of this view: being assigned the role of a case management judge carries with it the responsibility to take charge and actively manage the proceedings. Stinson J. left this role after a lengthy period at the helm, when there was a natural break in case management tasks: Stinson J. had decided the question of capacity, and the next project, this s.140 application, was about to begin. Abandoning the s.140 application shortly before it was argued on the merits would have left it for another judge to re-do work that had already been done, and familiarize herself with the history of these matters. In my view, unless I could not continue in the role assigned to me, it was my duty to continue it at least until another natural "break point" in the case management process.

[249] Finally, I also note that R.77.06(1) does not appear to apply to all case management judges, but only to judges who have been assigned to hear all motions in a proceeding. This point was not raised before me or addressed by me in June 2015, but I note it here in order to be comprehensive: it appears to me that there is a good argument that R.77.06(1) does not apply to the circumstances of this case in any event, since the s.140 application is under case management with me, but I have not been assigned to hear all motions in connection with it. I make this point, not to decide it definitively (and I rest my decision on the reasons given in June 2015, as expanded upon above), but in the interests of completeness in the event that this aspect of this decision is appealed.

(b) <u>No Bias or Reasonable Apprehension of Bias</u>

[250] The test for reasonable apprehension of bias is set out in the dissenting reasons of de Grandpré J. in *Committee for Justice and Liberty* v. *Canada (National Energy Board)*:

> … what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude. Would he think

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[246] *Royal Bank of Canada* v. *Hussain*, 2016 ONCA 637, per Simmons J.A., para. 12.

> that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.[247]

[251] The test is objective and fact specific:

> … the trial record must be assessed in its totality and the interventions complained of must be evaluated cumulatively rather than as isolated occurrences, from the perspective of the reasonable observer throughout the trial….[248]

[252] The standard is not perfection. I seldom review a transcript of a matter before me without wishing I had expressed myself differently or better at some points. Patience, courtesy and civility are essential standards of conduct for judges, and yet judges are only human, and when dealing with extremely difficult people (as judges often do), it is no basis for bias that a judge becomes occasionally, if regrettably, annoyed. "[T]here is a strong presumption that judges do conduct themselves fairly and impartially. A debate between the judge and counsel over the issues at hand is not a basis for a reasonable apprehension of bias."[249] These observations are equally true for a debate between the judge and a self-represented party, and it applies to debates that are forceful. To paraphrase an old adage from the House of Lords, litigation is not a tea party, and judges are not gracious hosts.

[253] Ms Atas delivered her motion record respecting recusal at the return of the motion for an interlocutory injunction, on September 6, 2016. It consists of a 20 page notice of motion (listing 60 grounds for the motion) and a 6 page affidavit, together with copies of endorsements and case management orders made during the course of the s.140 application process. She delivered supplementary materials on September 30, 2016, consisting of a supplementary affidavit of 58 pages.

[254] There are five principle grounds advanced by Ms Atas:

(i) I have evinced a predisposition in favour of the applicants throughout the process of the s.140 application, as reflected in my ordering a stay of proceedings and prohibition on fresh proceedings, except with leave from the case management judge;

(ii) I declined to allow Ms Atas to litigate the underlying proceedings on the merits in the s.140 application (including refusing her requests to cross-examine 22 witnesses on the merits of the underlying proceedings and

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[247] *Committee for Justice and Liberty* v. *Canada (National Energy Board)*, [1978] 1 SCR 369 at 394. Confirmed as the test in Ontario in *Chippewas of Mnjikang First Nation* v. *Chiefs of Ontario*, 2010 ONCA 47, para. 229, leave to appeal to SCC denied (2010), 276 OAC 398: and *AG Canada* v. *Mennes*, 2014 ONCA 690, para. 19.
[248] *Chippewas of Mnjikang First Nation* v. *Chiefs of Ontario*, 2010 ONCA 47, para. 230, as quoted (without references) in *AG Canada* v. *Mennes*, 2014 ONCA 690, para. 20.
[249] *AG Canada* v. *Mennes*, 2014 ONCA 690, para. 21.

permitting the applicants to rely upon affidavits from affiants with no personal knowledge of the underlying proceedings);

(iii) I refused to permit Ms Atas to amend her pleadings in the underlying proceedings, to serve a demand under R.15 in the Gomes/Kelly Mortgage Action, or to bring motions to vary or set aside judgments in the underlying proceedings under R.59.06, pending determination of the s.140 application;

(iv) I lack jurisdiction to decide the s.140 application for various reasons; and

(v) I made various comments over the course of these proceedings that reflected a negative animus towards Ms Atas and her position and which showed a positive animus in favour of the applicants.

[255] I will deal with each of these grounds briefly in turn.

[256] **The first ground relates to the stay.** It is clear from her conduct that Ms Atas wished to carry on with the underlying proceedings – seeking to attack judgments that have been made many years ago – for mortgage debts – which have all been paid (aside from disputed mortgage enforcement costs). In her materials, Ms Atas expresses concerns that I might not permit her to launch a counterclaim in the Current Defamation Proceedings. The parties are the self-same persons Ms Atas has sued – in some cases several times: it is reasonable to suppose that Ms Atas would be advancing claims that she has already asserted against these people. If so, then she would not be permitted to assert them all over again in a counterclaim in the Current Defamation Proceedings. Such a counterclaim would be vexatious.

[257] The stay has had the effect of delaying Ms Atas' proceedings for the duration of the s.140 application. Given the extraordinary delays resulting from the capacity issue and in the litigation generally, this prejudice is simply the price Ms Atas must pay for having litigated as she has done. The stay has not caused her any substantive prejudice that she has identified.

[258] Ms Atas has been unable to meet deadlines in the s.140 application. If she had been pursuing other claims at the same time, it is hard to see how matters could possibly have progressed at a reasonable pace in the s.140 application.

[259] The stay was ordered at the outset of my tenure as case management judge. I do not recall whether there was any objection to it from Ms Atas' counsel. Certainly no motion was brought for leave to appeal that order. The time to challenge the stay was at the time it was made, not at the end of the process.

[260] Ms Atas was represented by competent counsel until Mr Napal left the brief. Mr Napal never objected that the stay order was a prejudgment of the underlying s.140 application. Ms Atas, who was never shy about voicing her concerns, did not raise this concern at the time.

[261] I cannot imagine any judge tasked with case managing these matters, in the face of the s.140 application, would have permitted the allegedly vexatious litigation to carry on in the face of the application. Many judges have made similar orders in similar circumstances, to bring matters under control pending disposition of a s.140 application. Stinson J. did this pending decision on the capacity issue. D.M. Brown J. (as he then was) did this in the face of an allegation of vexatiousness in *Manufacturers Life Insurance Company* v. *Crowe*.[250] The order was made to impose an ordered and systematic process on all parties, and not with a view as to how the s.140 application would turn out, or what would follow after it. Indeed, at the time the order was made, I knew virtually nothing about the underlying proceedings, other than an estimate of the number of proceedings, and that the proceedings had their genesis in mortgage enforcement proceedings, the first of which was the judgment of Pitt J. in 2005.

[262] **The Second Ground Concerns the Process of the s.140 Application:** I did not permit Ms Atas to litigate the merits of the underlying proceedings in the s.140 application. The applicants based their application on the history of matters that had been brought before the court, and with evidence of Ms Atas' vexatious behaviour outside the litigation process (defamatory internet postings, administrative proceedings and disciplinary complaints). Ms Atas offered two explanations for the vexatious nature of her litigation conduct: she was self-represented some of the time and so did not know how to draft pleadings properly (for example), and she was suffering from a mental illness that, for a time, rendered her incapable. Ms Atas failed to lead any evidence that her medical issues would have led her to behave as badly as she did. She has continued to be vexatious since she was found legally capable in 2014. Ms Atas was not precluded from adducing her own evidence on the merits of the underlying proceedings and I am satisfied that she has had ample opportunity to make her case on the s.140 application.

[263] **The Third Ground Is A Repetition of the First Ground**: Ms Atas proposed to undertake steps in the underlying proceedings that are designed to develop evidence about the underlying merits of her claims. That would have been inconsistent with the stay and would have put the parties to unnecessary expense and delay.

[264] **The Fourth Ground Is Irrelevant to the Issue of Bias**: it is an argument on jurisdiction and had to be raised as part of the s.140 application, not in a motion after argument was over. One aspect of it was raised in a motion I decided against Ms Atas on June 30, 2015. The other points – which are without merit – were raised in front of Stinson J., but were not raised on the s.140 application in front of me. None of them have anything to do with bias and it was not open to Ms Atas to raise them when she did.

[265] **Comments Allegedly Disclosing Bias**: some of the remarks attributed to me simply were not said. Some are reported inaccurately and out of context. Some are trivial. I address only two here, which are illustrative:

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[250] *Manufacturers Life Insurance Company* v. *Crowe*, 2010 ONSC 3302, per D.M. Brown J. (as he then was).

(a) Ms Atas complains that I prejudged matters by telling her during argument of the interim injunction in the Current Defamation Proceedings, in January 2016, that I would not let her plead truth or justification for the impugned internet publications.

(b) Ms Atas complains that when I granted the applicants' motion to adduce fresh evidence, I said that my decision on the s.140 application would create an estoppel for all of the underlying litigation, effectively deciding those issues without permitting her to adduce a full record on the merits.

I. Justification in the Defamation Proceedings

[266] Ms Atas has only slightly mischaracterized my comments to her on this issue. I told her that I might not permit her to defend the defamation proceedings on the basis of justification. This comment was an integral part of the argument on the interim injunction, and it usefully advanced my understanding of the issue before me that day.

[267] Argument on the merits of the s.140 application had been completed on September 11, 2015 and the decision was under reserve. At the close of argument of that application, I had concluded that Ms Atas should be declared a vexatious litigant. That is a matter of judgment, not prejudgment; the record was closed and argument was completed. What remained was for me to prepare these reasons. I had not put my mind to the various ancillary orders that are the most challenging aspect of this application – but it was clear in my mind that Ms Atas was a vexatious litigant and that a s.140 order would issue.

[268] Then around December 2015 I received information that Ms Atas had published thousands of pages of defamatory comments about the applicants on the internet starting immediately after the conclusion of oral argument on the s.140 application. Some of the applicants retained defamation counsel and sought a return date for a motion for an interim injunction. Counsel for the applicants on the s.140 application sought a date for a motion to adduce fresh evidence on the s.140 application. I set a schedule for exchange of materials and an early return date for hearing of the interim injunction in January 2016.

[269] At the return of the interim injunction, I had the sort of record one would expect in a matter brought with urgency – I had voluminous materials from the moving parties, and no material response from Ms Atas. The question for me on this motion was whether to grant an interim injunction on the strength of the materials before the court, pending return of a motion for an interlocutory injunction.

[270] I reviewed the impugned publications and concluded that they were posted by Ms Atas, by someone else at Ms Atas' direction, or that they were posted by someone trying to make it look like they had been posted by Ms Atas. One of the questions on the interim motion was the strength of the evidence that the impugned publications came from Ms Atas, directly or indirectly.

[271] Ms Atas was still represented by Mr Napal on the s.140 application, but Mr Napal advised that he would not be representing Ms Atas in respect to the defamation proceedings. Thus Ms Atas was self-represented during argument of the interim injunction motion. She made argument directly to me, rather than through counsel, and my questions were posed directly to her, rather than to counsel.

[272] It was in this context that I was trying to find out the defenses that Ms Atas proposed to assert in the Current Defamation Proceedings – and in particular whether Ms Atas acknowledged publishing the impugned publications. When I told her that she might not be permitted to litigate the defense of justification, she was both surprised and angry. As I indicated earlier in these reasons, I concluded that my question had "hit the proverbial nail on the head": Ms Atas had published the impugned publications, did so with a mind to provoking a lawsuit, and intended to use that lawsuit to litigate the issues she was raising in the underlying litigation.

[273] Is this entering the fray? I think not. A judge can be in a difficult situation on an interim injunction. The order, if made, can profoundly alter the course of things. The record is partial, the parties' preparation is preliminary, and the court's opportunity to immerse itself in the record is limited. Getting to the truth of what is really going on can be a challenge. I usually engage in a Socratic exchange with the parties during submissions (whether on motions or at the end of trial) because it advances my understanding of the case and helps to focus discussion on the matters I consider important and difficult. This is so whether the parties are represented by counsel or are self-represented. I treated Ms Atas in this exchange exactly as I would have treated any litigant in the same situation, and the results were useful for the truth-finding task I faced to reach my decision on the interim injunction.

[274] As for the impression created by this comment for future case management: it is a statement that applies principle: to the extent that a defense of justification would contest issues decided against Ms Atas, she will not be permitted to raise it in defense of the impugned publications. That is, if there is an issue estoppel because of the judgments in the underlying litigation, Ms Atas will not be permitted to mount a collateral attack on those judgments as part of her defence in the Current Defamation Proceedings. Of course, if there are allegations of justification that would not be so barred, they could proceed.

[275] These sorts of exchanges lie at the heart of effective case management. They reflected my understanding of the case learned entirely from my work as the case management judge – an understanding that should be brought to bear on issues that arise as case management moves forward. They are not questions of prejudgment, but of judgment. They do not raise a reasonable apprehension of bias.

II. <u>The s.140 Application Does Not Decide the Underlying Litigation on the Merits</u>

[276] This point is a bit tricky because of the nature of the s.140 application. As I indicate at the end of this judgment, my findings in this judgment about the underlying litigation do not constitute findings in the underlying litigation. They are made on the basis of the record on the s.140 application, which does not include a full record on the underlying litigation.

[277] I have said in case management, many times, that prior court judgments give rise to issue estoppel – and that those matters cannot be relitigated. Ms Atas takes this as prejudgment because she wishes to relitigate. There are stringent tests to interfere with an authoritative judgment once appeals have been exhausted. I have tried to say as little as I can about whether those stringent tests can be met, since those issues are not now before me. I have made common sense observations about the likelihood of that happening, given the effluxion of time, the applicable limitations periods, and the apparent inutility in disturbing judgments that have been paid subject only to costs assessments.

[278] On the usual principles on motions to vary or set aside after judgment, Ms Atas faces a heavy burden to persuade the court to interfere with the judgments in the Gomes/Kelly Mortgage Action and the two Peoples Trust Mortgage Actions. As a result of this judgment, Ms Atas faces the additional burden of satisfying the court that she should be permitted to proceed, given her history as a vexatious litigant. Ms Atas has taken discussion of these issues during argument to have amounted to a statement from me that the decision on this application, itself, estops the underlying litigation. It does not do so by operation of law. It may have that effect if Ms Atas cannot overcome the substantial burdens of persuasion she faces before she can move forward with her proposed motions.

[279] I understand the concern that Ms Atas has here, and the distinctions involved in applying issue estoppel can be fine. The process that will now unfold will give her an opportunity to make her case that claims that she still wishes to pursue should be permitted to proceed. And that process will see outstanding claims for professional fees and mortgage enforcement costs brought to a conclusion promptly, fairly, in a proportional process. None of this bespeaks bias or reasonable apprehension of bias, but rather the consequences of Ms Atas' vexatious behaviour and the court's obligation to wrestle with how to deal with it.

(c) Conclusion Respecting Bias

[280] A judge must have an open mind. This is essential to the judicial temperament. A judge takes an oath of office to try the cases before him without bias, favour or partiality, in accordance with the evidence and the law. Judges take this oath very seriously and view it as the essence of their duty: to give fair, impartial and lawful judgment.

[281] So, of course, a judge must have an open mind. An open mind, but not an empty one. The mind of a judge is not, cannot be, must not be, a *tabula rasa*. Judges come to the bench with knowledge of the law, a lifetime of experience in life and, it is to be hoped, abundant common sense. To this is added judicial training and experience gained by judging. All of this knowledge and experience judges are expected to bring to bear on the disputes that come before them.

[282] To this list is added, for the case management judge, knowledge of the case and the people involved in it that is gathered over the process of case management. It is in this area that the judge may have been an empty slate when the case first comes before him, as was the case for me in this matter: I did not know any of the parties or anything about the underlying litigation

when I was appointed as case management judge by Himel J. in September 2014. I have no personal or financial interest in the outcome of the case. I am completely indifferent as to who wins or loses.

[283] Ms Atas understands the principle of impartiality differently. For her, the judge ought to have no knowledge about the case or the law that applies to it prior to the commencement of argument. For her, a judge who has been involved in her matters previously does not have an open mind because of the knowledge he has from that prior involvement. And where the judge has ruled against her previously, she should be entitled, in her mind, to a judge that has not already drawn conclusions with which she disagrees.

[284] That is not what the principle of impartiality requires. A litigant is not entitled to a "fresh" judicial mind every time she comes to court. Ms Atas' multiple claims of bias are premised on this misconception. They do not have merit.

B. Merits of the Underlying Proceedings and the Applicants' Affidavit Evidence

[285] The applicants base their application on the litigation history of Ms Atas. They argue:

(i) the litigation history itself is clear that Ms Atas is a vexatious litigant who must be controlled by the court, quite apart from the underlying merits of any matters in which she is a litigant;

(ii) in many instances it is clear from the pleadings and the litigation history that Ms Atas' claims are bound to fail: they have been decided already, they are on their face outside applicable litigation periods, they are repetitious, duplicate or follow-on claims that are obviously abuses of process;

(iii) Ms Atas' conduct, within and outside the litigation, has been so extreme that, regardless of the underlying merits, she should be declared vexatious; and

(iv) taking everything into account, it is clear that Ms Atas is a vexatious litigant.

[286] The applicants do not wish to contest the merits of the underlying litigation because, they say, this will just lead to further vexatious litigation. For this reason the applicants framed their materials from legal professionals with little or no personal knowledge of the underlying proceedings (aside from what may be learned from reading the documents filed in the litigation and in court decisions).[251] None of the named applicants have submitted their own affidavits, and thus none were made available for cross-examination.

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[251] Cristine Perri, a litigation assistant at Dale & Lessman LLP, counsel for Peoples Trust, who swore affidavits dated September 23, 2014, March 13, 2015 and May 13, 2015; Justin Anisman, a lawyer in the office of counsel for

[287] Ms Atas objected to this approach. Her position is that her claims are meritorious. She argues that the merits of her claims are part of the analysis in which this must court must engage as part of the process of deciding whether she is a vexatious litigant. She takes the position that:

> The affidavit of Justin Anisman, Yan Wang and Christine (sic) Perri have not complied with the technical requirements of Rule 39.01 (5). They provide hearsay evidence on contentious issues.[252]

Rule 39.01(5) precludes hearsay evidence on contentious matters in an affidavit used on an application. Ms Atas claims that much of the affidavits is contentious. They do not seem so to me insofar as they provide a history of litigation steps taken in the underlying proceedings. There are places where the deponents comment on the underlying merits of the underlying proceedings. Where these comments are made without reliance on court decisions, the evidence is not admissible and I have not placed any weight upon it.[253] [254] There is one other category of evidence, however, upon which I must address further.

[288] In some places the applicants' witnesses have attached as exhibits to their evidence affidavits sworn by other persons in underlying proceedings.[255] These exhibited affidavits are not admissible for the truth of their contents – the deponents of these affidavits were not made available to Ms Atas for cross-examination, and it would not be fair for the evidence of these people to be admitted without an opportunity to challenge it by way of cross-examination. These documents are admissible, however, for the limited purpose of showing that they were filed and

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the applicants, who swore affidavits dated September 30, 2014 and May 18, 2015; Yan Wang, a solicitor for the Chahals, who swore an affidavit dated September 25, 2014.

[252] Further supplementary affidavit of Nadire Atas sworn May 15, 2015.

[253] I so conclude for two reasons. First, these deponents are not qualified as experts to opine on these topics, and these matters, to the extent that they are admissible at all, are matters of opinion for which expert evidence would be required. Second, these statements are really argument about matters which are for the court to decide – whether proceedings are vexatious or an abuse of process. And third, the applicants have refused to produce witnesses with personal knowledge, to submit to cross-examination, or to adduce complete factual records on the merits of the underlying proceedings. As noted in this decision, I accepted this approach to this application and denied Ms Atas her requests to examine witnesses in respect to the merits. The applicants may not, in this context, lead evidence on the underlying merits of the cases apart from what is disclosed in court documents, judicial decisions, and documents that are not contested.

[254] There were other minor problems with the applicants' evidence, generally too immaterial to address in detail in these reasons. For example, Justin Anisman included draft minutes of a case management meeting before Stinson J. dated July 21, 2014 as Exhibit "Y" to his affidavit of September 30, 2014. These minutes were never settled before Stinson J. I concluded that I was not in a position to settle those minutes, and thus anything purportedly decided at that case conference would have to be raised again before me. This does not mean that the case conference before Stinson J. did not take place; however, there is no order emanating from that case conference. I have disregarded the unsigned minutes of this case conference.

[255] See for example Affidavit of David Brooker sworn April 16, 2010, Exhibit "N(a)" to the affidavit of Justin Anisman sworn September 30, 2014.

that the underlying step to which they relate took place and what it was about.[256] In fairness, this is the basis on which the applicants tendered this evidence – not for the truth of the contents of the subordinate affidavits, but for the fact they were filed.[257]

[289] This court acceded to the approach advocated by the applicants, with the proviso that it would be for the applications judge to decide the extent to which the merits of the claims would have to be considered as part of the application process. Ms Atas made the point that, if the underlying merits were not to be explored, then the pleadings should be taken as true on the general principles that apply to motions under Rule 21.

[290] I have concluded that the answer lies somewhere in between. The court must conduct an appraisal of the underlying proceedings, not to decide it on the merits, but to decide whether Ms Atas is vexatious. A vexatious litigant may still have some valid claims, a point that is recognized in the terms of this judgment which provide for systematic approaches to all of the outstanding litigation in order to bring it all to a swift, fair conclusion, by proportionate means, recognizing the value of the interests truly at stake.

[291] Ms Atas did not return to this issue during argument of the s.140 application, but I have proceeded on the basis that her continuing objections were never withdrawn, even if not pursued. And with this assumption in mind, I reject her request for a full inquiry into the merits of the underlying proceedings as a part of the process of deciding the s.140 application. There is no need to do that: the record establishes an overwhelming case for finding her a vexatious litigant. It is neither necessary nor desirable to permit Ms Atas to adduce a record on the merits of the underlying proceedings to reach this conclusion. It may turn out that there is some merit to some of it – that remains to be seen – but that could never excuse her thoroughgoing abuse of the civil justice system for so many years. In my view she should never be permitted to litigate again in any forum without prior judicial approval, and then only with active judicial case management. Otherwise, I am confident that her matters will spiral into an unwieldy and unending round of subordinate and tertiary proceedings.

[292] Finally, I note that the approach to the application taken by the applicants is consistent with the usual practice for these applications.[258] I have relied primarily on the documents filed, not the narrative in the applicants' affiants. I echo the comments of Cumming J., in similar circumstances, in the *Chavali* case:

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[256] Many of these affidavits set out protracted litigation steps in underlying proceedings. I have not found it necessary to rely upon these protracted litigation histories in this decision.

[257] See exchange between counsel on this issue during the cross-examination of Justin Anisman, June 4, 2015, QQ. 50-66, pp. 15-21.

[258] See, for example, the description by H.K. O'Connell J. of the materials filed before him in *AG Canada* v. *Mennes*, 2012 ONSC 3918, para. 16, and the Court of Appeal's decision in the same case summarizing the record presented by the Attorney General: 2014 ONCA 690, paras. 4-8.

> The primary approach in considering this Application is to look at the 'conduct' of the Respondents in respect of instituting and conducting proceedings in court. In doing this I have been careful not to focus demandingly upon the 'merits' of the actions. There may be a good cause of action against some parties…. It is noted that both Ng (in 1992) and Ault (in 1995/6) were later found guilty of offences and lost the right to practice their respective professions because of their misconduct, although this was in respect of matters unrelated to the Chavalis.
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> …
>
> … Their present counsel offers, as the explanation for their conduct in instituting and conducting proceedings in court, that the tragic loss of their properties, coupled with financial ruin, gave rise to an obsession. One must have compassion for the Chavalis and their misfortune. However, it is the reality of the obsessive conduct of the Respondents in instituting and conducting proceedings in court that is the issue relevant to the Application.[259]

[293] Ms Atas raised some valid concerns with the impugned affidavits, as I have explained. Aside from my disposition of those concerns, set out above, the motion to strike the applicants' affidavits is dismissed.

C. Ms Atas' Response to the Applicants' Motion to Adduce Fresh Evidence

[294] I allowed the fresh evidence of the defamatory internet publications, as explained above. Ms Atas' primary defence of the publications is apparently that they are true. In her defence of this position, she elicited a record primarily focused on the underlying merits of the underlying proceedings. This record is in evidence only for the motion to adduce fresh evidence; it is not in evidence on the s.140 application itself. At the conclusion of the motion, I ordered specified fresh evidence adduced by the applicants and then gave Ms Atas an opportunity to deliver any responding materials she wished in respect to the s.140 application. The respondents' record on the motion to adduce fresh evidence is not, itself, part of the record of evidence

8. Remedies

[295] Subsection 140(3) of the *Courts of Justice Act* provides:

> Where a person against whom an order under subsection (1) has been made seeks leave to institute or continue a proceeding, the person shall do so by way of application in the Superior Court of Justice.

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[259] *Law Society of Upper Canada* v. *Chavali* (1998), 21 CPC (4th) 20 (OSCJ), per Cumming J., paras. 17 and 19, aff'd (1998), 31 CPC (4th) 221 (ONCA).

[296] Subsection 140(4) of the *Courts of Justice Act* provides:

> Where an application for leave is made under subsection (3),
>
> (a) Leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;
>
> (b) The person making an application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;
>
> (c) The court may rescind the order made under subsection (1);
>
> (d) The Attorney General is entitled to be heard on the application; and
>
> (e) No appeal lies from a refusal to grant relief to the applicant.

[297] There are several issues concerning the scope of the order that should be made against the respondents:

> (a) Is the scope of the remedy limited to the applicants in this application?
>
> (b) Should a *Chavali* order be made requiring the respondents to seek leave from a judge, without notice, before applying to commence or continue any proceeding or to set aside or vary the s.140 order?
>
> (c) Should the respondents be precluded from bringing or continuing claims outside the scope of the s.140 order, human rights complaints or complaints to regulatory bodies?
>
> (d) Should the respondents be given leave under s.140(3) of the *Courts of Justice Act* to pursue an appeal from this decision?
>
> (e) Should the respondents be required to be represented by counsel?
>
> (f) Should the respondents continue to have the benefit of fee waivers?
>
> (g) Should the respondents be restrained from harassing conduct?

I address each of these points in turn.

(a) <u>Is the scope of the remedy limited to the applicants?</u>

[298] This issue arose during case management. Ms Atas asserted that the scope of any order granted in this proceeding would have to be limited to the applicants in this proceeding. In other words, Ms Atas took the position that, if the application was granted, the s.140 order would not impede her ability to commence or continue proceedings against persons who are not applicants

in this proceeding. In support of this proposition she relied upon the decision of D.M. Brown J. (as he then was) in *Landmark Leasing* v. *Marino*.[260]

[299] I addressed this issue at paragraph 3 of my case management order dated April 27, 2015:

> Ms Atas argues that only the s.140 applicants have brought the application, and that other persons with whom Ms Atas is engaged in litigation are not entitled to the benefit of any s.140 order that may be made – in effect, the non-applicants may not "coat-tail" on applicants, to use the phrase employed by D.M. Brown J. (as he then was) in *Landmark Leasing*…. In that case, D.M. Brown J. did not rely upon the conduct of Mr Marino respecting Rogers, and tailored his order to the vexatious conduct Mr Marino engaged in against Landmark Leasing. Clearly it is possible to grant a tailored vexatious litigant order. However this is not a required restriction: it is not necessary for each person vexed by a vexatious litigant to pursue a s.140 order. The case law is perfectly clear on this point, and it will be for the court deciding the s.140 application to decide how to frame the appropriate remedy, if one is called for.

[300] To repeat, the case law is perfectly clear on this point. As stated by Gray J.:

> The section is drafted in such a way as would make it possible to make an order preventing a vexatious litigant from conducting proceedings against a particular litigant without leave of the Court, or to make an order that is more broadly framed so that the vexatious litigant would require leave of the Court to commence proceedings against anyone.[261]

[301] A s. 140 order can be made in respect to all litigation involving the respondents, and in the circumstances of this case, it should be. Ms Atas has focused her attention on a broad range of people in the past and there is no reason to believe that a tailored order would solve the problem.

(b) <u>Should there be a *Chavali* order?</u>

[302] A litigant who just will not desist can pursue his obsessions, or resort to litigation to harass, by bringing serial applications for leave to bring or continue proceedings. In a busy court site like Toronto, with over 80 judges, and a roster of judges that is constantly changing, the problem is compounded if these applications can be brought in the ordinary course. With ten other Superior Court of Justice court sites within a two hour drive of Toronto, the potential for mischief is evident.

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[260] *Landmark Leasing* v. *Marino*, 2011 ONSC 1671.
[261] *Bank of Montreal* v. *Cudini*, 2013 ONSC 482, per Gray J., para. 104.

[303] I.V.B. Nordheimer J., as he then was, fashioned a solution to this problem that has proved successful in curtailing this behaviour, in *Chavali* v. *LSUC*.[262] Nordheimer J. ordered that the Chavalis could not seek leave to commence or continue a proceeding or lift the s.140 order without first obtaining permission from a judge to do so. This permission would be sought by without notice motion for permission to bring an application under s.140(3) of the *Courts of Justice Act*. As a matter of efficiency and to ensure that the Chavalis' litigation history was known to the judge considering the without notice motion, Nordheimer J. directed that these motions be brought to him.

[304] I have found this approach useful in several cases to curtail continued harassment by a vexatious litigant. Although I have been unable to find direct authority from the Court of Appeal approving this kind of order, the issue has been before that court at least twice. The Chavalis, themselves, once purported to appeal a decision of Nordheimer J. refusing them permission to apply under s.140(3). That appeal was dismissed. If the Court of Appeal had felt that the predicate order had been made without jurisdiction, or that the restriction on the Chavalis ability to access the courts was unwarranted, it could have intervened.[263] Similarly, in *Simpson* v. *Institute of Chartered Accountants of Ontario*, Mr Simpson appealed a decision of mine refusing him permission to pursue proceedings against the Institute.[264] My order had been a *Chavali*-type order, though Mr Simpson had not been found to be a vexatious litigant under s.140 of the *Courts of Justice Act*. The Court of Appeal dismissed Mr Simpson's appeal under R.2.1, and set out the process to be followed for future R.2.1 proceedings in that court.[265] Again, if the Court of Appeal had felt that my order had been made without jurisdiction or was an unreasonable fettering of Mr Simpson's access to the courts, then it could have said so. I view a *Chavali* order as rooted in the court's inherent jurisdiction to control its own process: preventing a wayward litigant from using the justice system to harass and oppress others is surely within the court's inherent jurisdiction.

[305] I think it likely that Ms Atas will use the process for applying for leave under s.140(3) to bring repeated unmeritorious applications which will harass opponents who have already borne an unreasonable burden in fending her off for many years. I am also satisfied that the court's inherent jurisdiction ought to be invoked to prevent this from happening.

(c) Administrative Proceedings and Regulatory Complaints

[306] Section 140 dates back to the late 19th century. It was designed to provide a mechanism to prevent abuse of the civil justice system to cause harm to others. We did not have the vast array of administrative and disciplinary bodies then that are the hallmark of the modern democratic state today.

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[262] *Chavali* v. *Law Society of Upper Canada*, [2006] OJ No. 2036 (SCJ).
[263] *Chavali v. Law Society of Upper Canada*, 2007 ONCA 482.
[264] *Simpson v. Institute of Chartered Accountants of Ontario*, 2014 ONSC 2861.
[265] *Simpson v. Chartered Professional Accountants of Ontario*, 2016 ONCA 806.

[307] Section 140 does not authorize the court to issue an order precluding a person from commencing or continuing administrative proceedings or complaints. Administrative bodies control their own process, and most have some mechanism to protect against abuse of their process.[266] I agree with Gray J. in *Bank of Montreal* v. *Cudini* that the court does not have jurisdiction to make an order under s.140 to preclude proceedings before bodies that are not "courts".[267]

[308] This court can, however, provide some protection for the targets of Ms Atas' conduct. I direct that Ms Atas provide a copy of this decision and the formal order issued as a result of this decision, to any person or body with whom she initiates or continues a complaint of any kind (including, without limitation, any court, administrative body, regulatory body, the police and the Crown).[268] The persons and organizations receiving the complaints will then know of this court's decision; it will be for them to control their own processes, but with the knowledge of this court's findings respecting Ms Atas' conduct as a litigant.

[309] It would be helpful to have one process that could address the entire problem of vexatious litigants: it does not seem fair that opponents of litigants such as Ms Atas should have to engage in a process like a s.140 application repeatedly, before multiple bodies. However, the solution to that dilemma lies with the legislature or the other administrative tribunals and bodies. In my view, for this court to fashion a broader remedy would be to overstep, at least at this stage in the development of remedies to control vexatious litigants.

(d) Should the Respondents Have Leave to Pursue an Appeal of this Decision?

[310] All Canadian courts (other than the Supreme Court of Canada) permit appeals from vexatious litigant orders (though not from decisions refusing leave to a declared vexatious litigant to bring or continue proceedings).[269] I advised Ms Atas that I would grant her leave pursuant to s.140(3) to pursue an appeal of this decision both on the day that I declared Ms Atas vexatious, and several times previously during the case management process.[270]

[311] An order granted under s.140 of the *Courts of Justice Act* is a significant derogation of the rights of a person to access to the courts. It involves an assessment of a broad range of

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[266] See for the example the discussion of the Human Rights Tribunal of Ontario's efforts to control misuse of its system as described in David A. Wright, "Implementing the New Ontario *Human Rights Code*: A Tribunal Perspective" (2014-15) 18 Cdn. Lab. & Empl. L.J. 101.
[267] *Bank of Montreal* v. *Cudini*, 2013 ONSC 482, per Gray J., para. 108.
[268] I include "courts" to include the Federal Court of Canada and the courts of jurisdictions outside Ontario.
[269] *Kallaba* v. *Bylykbashi*, 2006 CanLII 3953 (ONCA), paras. 27-34. See also, for example, *Ayangma* v. *Prince Edward Island (Human Rights Commission)*, 2004 PESCAD 3; *S.* v. *S.*, [1998] BCJ No. 2912 (BCCA); *Canada (AG)* v. *Mishra*, [2000] FCJ No. 1734 (FCA); *Law Society of Upper Canada* v. *Chavali*, [1998] OJ No. 5344 (CA); *SMBD – Jewish General Hospital* v. *Saraffian*, [2004] JQ No.12149 (Que. CA); *Lee* v. *Lee*, [1990] MJ No. 627 (CA); *Saskatchewan Wheat Pool* v. *Kieling*, [1994] 6 WWR 730 (CA).
[270] The earlier advice was conditional on my making such a finding and without implying that I would do so.

conduct and often involves, as it does in this case, sharp criticism of the respondents' conduct. Many litigants, certainly vexatious litigants, tend to personalize decisions such as this one. This has been the case with Ms Atas throughout these proceedings (reflected in her many complaints and lawsuits against opposing lawyers, and her many allegations of bias and recusal motions against judges). This judgment repositions all of Ms Atas' litigation, places it firmly under the control of one judge, and precludes unreasonable expansion of the litigation in future. Such an order should not be immune from appellate review.[271]

[312] The applicants acknowledge this principle in para. 1(b) of their notice of application, where they ask that an appeal from this decision be excepted from the requirement to obtain leave under s.140(3) of the *Courts of Justice Act*.

[313] This court does not have the jurisdiction to case manage a proceeding in the Court of Appeal, or to direct that there be case management in the Court of Appeal. It was suggested that I should "recommend" appellate case management. Respectfully, it is not for this court to make "recommendations" to the Court of Appeal. If there is an appeal of this decision, it will be for the parties to bring their concerns about the appeal process to the Court of Appeal.

[314] This judgment sets a schedule to move forward with the underlying litigation in case management. I would have ordered this schedule regardless of the result of the s.140 application. Ms Atas should understand that this judgment, including the schedule that arises from it, is effective immediately, even in the absence of a signed formal judgment. This decision is not stayed because Ms Atas says she has decided to appeal, or because she launches an appeal, or even because she launches a stay motion. This judgment is effective and in force now, and will remain so unless and until it is overturned on appeal, or stayed pending appeal.

(e) <u>Representation by Counsel</u>

[315] Ms Atas' two primary explanations for her behaviour are her mental illness and lack of representation by counsel. Junior counsel in her solicitor's office deposed:

> The conduct of these respondents in these actions now that they are represented by counsel is reasonable and a legitimate furtherance of their meritorious claims.[272]

Setting aside the question of whether any of the claims may be meritorious (which is for another day), it is true that Ms Atas' conduct was markedly better when she was represented by Mr Napal. It was not good, but it was better, and generally fell within the range of the

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[271] See *Varma* v. *Rozenberg*, [1988] OJ No. 4183 (CA), para. 5; *Mascan Corp.* v. *French* (1988), 64 OR (2d) 1 at 6-7 (CA); *Kallaba* v. *Bylykbashi* (2006), 265 DLR (4th) 320 (Ont. CA), para. 26; *Dobson* v. *Green*, 2012 ONSC 4432, per K.L. Campbell J., para. 13.

[272] Affidavit of Joshua Makori sworn March 2, 2015, para. 9.

"parry and thrust" of litigation undertaken by a very determined litigant. However, when Mr Napal's representation ended in the spring of 2016, Ms Atas substantially reverted to her old ways.

[316] I have considered requiring Ms Atas to retain counsel for any proceedings in which she is a party and to represent the corporate respondent. I have decided against that course. Ms Atas has sued many of the lawyers who have acted for her.[273] She has refused or failed to pay many of her legal accounts and has sought assessments almost as a matter of course.[274] Her choice of counsel, at this stage, would certainly be limited; it would be a brave counsel, indeed, who would undertake a brief with a client with the litigation history of Ms Atas.

[317] Then there is the question of payment. Ms Atas has told me during case management conferences that she does not have funds to pay the costs orders awarded against her. While I have no evidence to support this assertion, I note that Peoples Trust has been seeking to enforce the balance it claims on the Wycliffe Property for many years without success. I can also take notice that, in her *Rowbotham* application, Ms Atas took the position that she is unable to retain counsel privately, however failed to prove this allegation.[275] Ms Atas has given evidence that she obtained a fee waiver to excuse her from paying court fees.[276] If Ms Atas is as impecunious as she says she is, then she may not have resources to pay for a lawyer. During case conferences Ms Atas suggested that she could pay for a lawyer from the substantial damages she expects to win in her litigation. It is, of course, for any counsel approached by Ms Atas to assess this prospect. However it does not seem realistic. On the basis of findings made by the courts to date, there is nothing further to be done in respect to the Gomes/Kelly Mortgage Enforcement Action. The claims against various persons connected to the mortgages and their enforcement all appear to be collateral attacks on a final court judgment. The claim respecting fees and commissions (which seems to be the only basis on which, arguably, Ms Atas might ever have had a claim against the persons who received those fees and commissions) appear to be barred by the *Limitations Act*, and in any event would sound in restitution for the amount of those fees and commissions: $21,500.

[318] In respect to the actions arising from the Peoples Trust mortgages, based on prior judicial decisions it appears that all that remains are claims concerning the lender's mortgage enforcement costs. Those amounts are said to be substantial: now claimed, apparently, at more

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[273] Rahul Shastri, David Sloan, Patrice Côté, David Brooker, Moses Muyal, Taras Kulish, Ben Salsberg, Michael Harold Kimberley, Irene Mary Kimberley, Nicolas Canizares, Michael John Mitchell, Ralph Steinberg and Stanley Goodman. The other lawyers she has sued have acted for opposing parties: Ron Hatcher, Christina J. Wallis, Raymond Stancer, Mitchell Hart Rose, Blair Coleman Rose, David Bresver, Matthew Cameron, and Garth Dingwall (a total of 19 lawyers).

[274] In addition to fee disputes with the lawyers she has sued, it appears that she has had fee disputes with, or has allegedly failed to pay fees to Leonard Susman, William Daimin, Pinkofsky Lockyer, Jerry S. Balitsky, Linda H. Greer and Davies McLean Zweig: see Schedule 1.

[275] *Atas v. Attorney General*, 2017 ONSC 6029, per Pollak J., para. 17.

[276] Further Supplementary Affidavit of Nadire Atas sworn May 15, 2015, para. 30 and Exhibits "B" and "C".

than $200,000 in the aggregate. For this, there are funds held in trust of slightly more than $92,000. Perhaps there will end up being a credit balance owed to Ms Atas, but it seems just as likely that there will prove to be a shortfall owed by the respondents. The claims against the professionals involved in the mortgage enforcement proceedings also seem to be collateral attacks on the mortgage judgments and the mortgage accounting; if not, it is hard to see what damages could possibly have been caused by these professionals.

[319] These points are not made to judge the merits of these proceedings now, but rather as a preliminary assessment of the value of these proceedings, and thus the possible recovery from which a lawyer might recover legal fees. Given the highly complex and overblown way in which these matters have been litigated, and the need for ongoing judicial case management (which, it should be acknowledged, has been expensive for the parties because of the frequent court attendances involved), it would seem that, at minimum, any lawyer undertaking the retainer on behalf of the respondents would face a significant risk of not getting paid fully.

[320] Even if I am wrong about these points – even if Ms Atas has sufficient resources to retain counsel or can persuade counsel to undertake the brief "on spec", there is a further difficulty. Ms Atas has not managed to maintain a good working relationship with most of the counsel she has retained. She has been through an astonishing number of lawyers. Mr Napal was clear with me that he was not leaving the brief because of a breakdown in the solicitor/client relationship, and his representation of Ms Atas lasted from the time I started to act as case management judge in the fall of 2014 to Mr Napal's withdrawal from the file in the spring of 2016 – roughly a year and a half. However, I have no information that Mr Napal will be returning to the file or that Ms Atas has retained or will be able to retain replacement counsel.

[321] It would be preferable for the court, certainly, if the respondents had counsel. But I am concerned that requiring them to obtain counsel will create an insurmountable barrier to moving forward. This court's order and ongoing case management should leaven the potential negative effects, for opposing parties, of the lack of counsel for the respondents, and I am satisfied that this will be sufficient to provide reasonable protection to those parties as these matters move forward to a conclusion.

(f) Fee Waivers

[322] Ontario now waives court fees for indigent litigants.[277] This laudable initiative is intended to facilitate access to justice for those for whom payment of court fees would be an exceptional burden. This program is not intended to facilitate abuse of the court system and opposite parties by enabling a vexatious litigant to bring multiple proceedings and motions at no cost to herself in court fees.

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[277] *Administration of Justice Act*, RSO 1990, c. A.6, ss. 4.4(5) and 4.4(7).

[323] The *Administration of Justice Act*, which provides for fee waivers, does not contain a provision for cancellation of fee waivers. It cannot be that the Legislature intended that fee waivers be irrevocable, either where the factual basis for granting them has disappeared, or where a litigant abuses the process of the court with multiple vexatious proceedings and motions. This court may exercise its inherent jurisdiction in this situation, where there is an apparent gap in the legislation.[278]

[324] Ms Atas has conducted herself in such a way that she should not be permitted the benefit of fee waivers any more. She has put the court system, and thus the public purse, to considerable expense. Further, if there were some financial cost to her of bringing a proceeding or a step in a proceeding, she might exercise greater discretion in deciding which steps to take – just as is the case for other litigants. She is, apparently, impervious to adverse costs orders, and at the time being she is self-represented. Court fees and her own out-of-pocket expenses in duplicating materials and the like are the only financial disincentives for her to engage in frivolous litigation.

[325] I would add one qualification to this decision. Ms Atas should be permitted to ask the case management judge to relieve her from paying particular court fees for particular steps in proceedings if she can establish, on proper evidence, that she meets the financial criteria for a fee waiver and that the interests of justice would be advanced by waiving those fees for her.

(g) Should the respondents be restrained from harassing conduct?

[326] I considered making an order restraining the respondents from harassing the applicants or any of the parties to the underlying litigation.[279] Such an order could include a prohibition on any further internet postings, not as a remedy for defamation, but to prevent harassment. With some reservations, for the reasons that follow I have decided not to make such an order at this time.

[327] First, this relief was not sought in the s.140 application. The applicants did seek "such further and other relief as may be just", and a restraining order could be encompassed by this claim. However, the issue was not raised in the evidence, the factums or in oral argument. I am reluctant to grant relief of this kind with no notice or opportunity to present argument about it.

[328] Second, the underlying litigation remains in case management, a *Chavali* order is being made, and I will be continuing as case management judge. If there is further harassing conduct, opposing parties should be able to seek quick and effective redress.

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[278] *R.* v. *Rose*, [1998] 3 SCR 262, per L'Heureux-Dubé J., para. 64; *Morgentaler* v. *New Brunswick*, 2009 NBCA 26, per Drapeau CJNB, para. 49; *Re Stelco Inc.* (2005), 75 OR (3d) 5, per Blair J.A., paras. 34-35.

[279] The court has the jurisdiction to prevent harassment of litigants, and the scope of a restraining order may encompass any potential form of harassment. See *Dobson* v. *Green*, 2012 ONSC 4432 for an example of a s.140 application where a restraining order was also made.

[329] Third, such orders have to be framed carefully to avoid undue restraint of the ability of the party under the effect of the order from carrying on with her life in the ordinary course.[280]

[330] My conclusion on this point is without prejudice to such an order being sought in future, if there is further harassing conduct by the respondents. It is also without prejudice to the position of the plaintiffs in the Current Defamation Proceedings in respect to their claim for a permanent injunction and related relief.

9. Effect of Factual Findings in this Decision

[331] I have evaluated the underlying proceedings on the basis of the pleadings, the steps taken in the proceedings, documents referenced in the pleadings that were attached as exhibits in the record, the affidavits filed by the parties (though not comments by the applicants' affiants about the merits of the underlying proceedings) and the cross-examinations conducted in this application. It is an extensive record, but it is by no means a record on the merits of all the underlying proceedings.

[332] I am satisfied that the record before me is more than sufficient for me to adjudicate the s.140 application. It is not sufficient for me to adjudicate the merits of the underlying proceedings. That remains to be done. Throughout this judgment I have made comments about the merits of some of the underlying proceedings and Ms Atas' proposed future course of that litigation. I have come to what I consider to be reasonable conclusions on the basis of that limited record in order to decide whether an order should be made under s.140. As I said at the outset of these reasons, it is patently obvious from the record that Ms Atas is a vexatious litigant. The difficult issues concern what to do about her claims. As stated by Morgan J.:

> A vexatious litigant order does not deprive a person of access to the courts. Rather it provides an extra layer of oversight by the court; it is aimed at a litigant's conduct, but does not prejudice the merits of a claim.[281]

[333] I have provided directions about how each piece of litigation is to proceed next and have provided deadlines for moving forward. I have also provided "blanket" or "clean-up" directions that any and all other litigation issues involving Ms Atas must be brought to my attention, in case I have missed something or any of the parties have missed something in their materials. My directions are based on the pleadings and the court proceedings that have taken place already. Where I conclude that there is an arguable issue that ought to proceed on the merits, none of my findings in relation to that issue in this decision will create an issue estoppel: these findings are

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[280] For example, a blanket order that a person not use a computer connected to the internet, or not use the internet, as is sometimes ordered as a condition of interim judicial release, can have a profound effect on a person's ability to conduct everyday affairs.

[281] *Yue* v. *Park*, 2013 ONSC 1331, per Morgan J., para. 19.

final and binding in the context of the s.140 application, but no more than tentative appraisals for the purpose of the underlying proceedings.

[334] As will be seen from my findings in this decision and in my directions for individual actions, there are proceedings that appear to me to be abuses of process that should not be permitted to proceed. However, I am providing Ms Atas an opportunity to demonstrate otherwise, following a process that is proportionate to the interests at stake, with an eye to providing the oversight mandated by s.140(3) and the *Chavali* order I have made. This combination protects Ms Atas' ability to make a case to be permitted to continue with claims while at the same time protecting opposing parties from continued vexatious behaviour by Ms Atas.

10. Status of Outstanding Litigation

[335] As may be understood from these reasons, there are outstanding issues among the parties that require resolution to dispose of the underlying litigation justly. These issues should be approached proportionally – that is, with an eye to their real nature and to the amounts truly in issue. As acknowledged by Ms Atas during the case management process, any subsisting litigation that moves forward should be case managed.

[336] As may also be understood from these reasons, there is a great deal of underlying litigation that is apparently without merit or is foreclosed by limitations periods, estoppel, or which constitutes impermissible collateral attacks on prior final decisions. The future of this litigation ought to be addressed in a manner consistent with this court's finding that Ms Atas is a vexatious litigant, but also in a way which affords Ms Atas some opportunity to explain why she should be permitted to pursue these cases, on a case-by-case basis. An order under s.140 restricts Ms Atas' access to the courts in order to control it appropriately; it does not automatically terminate the underlying litigation.[282]

[337] There are also claims against Ms Atas – by Peoples Trust for mortgage enforcement costs and by some of Ms Atas' former lawyers for their fees for services. Apart from sale proceeds held by Dale & Lessman LLP, it seems unlikely that there is much prospect of payment of these amounts, but claimants may wish to obtain judgments anyway.

[338] The goal is to put an end to all of this conflict, once and for all, so that all the parties, including Ms Atas, may move on.

[339] The purpose of this court's order is not to preclude Ms Atas from obtaining justice on claims that may have merit. However, she must understand that her conduct as a litigant now results in substantial restrictions upon her free access to the courts: all participants in the justice system caught up in these cases – adverse parties, their lawyers, lawyers who have acted for Ms

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[282] *Canada (AG)* v. *Mishra*, [2000] FCJ No. 1734 (FCA).

Atas, and the court system itself, need to be protected from Ms Atas' unbridled irresponsibility as a litigant in order to achieve the goals of the civil justice system: a just result, on the merits, by fair process, proportionally in view of the issues truly in dispute.

[340] At the moment there are two proceedings that are not stayed pending release of this decision. The first is this proceeding itself, which continues to be subject to this court's case management. The second are the Current Defamation Proceedings. Those proceedings have (thus far) had three components:

(i) Injunction motions to restrain Ms Atas from publication of defamatory statements;

(ii) Contempt proceedings against Ms Atas for alleged failures to abide by injunction orders; and

(iii) The main action (in which Ms Atas has purported to bring a counterclaim).

The injunction proceedings included a motion for an interim injunction (which was granted in January 2016) and a motion for an interlocutory injunction (which was granted in September 2016). The current injunction is in place until the conclusion of trial or other court order. I directed that the Contempt Proceedings be heard by another judge. As it turned out, Pollak J. was assigned this task. Decision of the Contempt Proceedings on the merits was delayed for Ms Atas to bring a motion for an order that counsel be appointed to defend her at public expense (a "*Rowbotham* Order"). This motion was denied by Pollak J. on November 6, 2017. The Contempt Proceedings are currently scheduled to proceed on the merits before Pollak J. on March 5, 2018. The main action and purported counterclaim are in all other respects stayed pending release of this decision.

[341] Aside from the Contempt Proceedings before Pollak J., described above, and aside from any appeal that the respondents may bring from this decision to the Court of Appeal, all proceedings in which Ms Atas is a party are stayed pending further order of this court, excepting the steps directed to be taken in this judgment.

[342] Therefore, this court orders that the following steps be taken[283] in respect to proceedings involving the respondents:

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[283] The applicants sought an order declaring that various underlying proceedings are "an abuse of process" (notice of application, para. 1(g)). Many of them appear to be such an abuse, on the face of the pleadings. However, the applicants declined to adduce a record on the merits for those proceedings, or to engage in a process of review as would take place on a motion to dismiss under Rule 20 or Rule 21. I decline to dismiss any actions summarily at this stage: the respondents should have some opportunity to explain why a particular proceeding ought to be

(1) **04-CV-279726** [Gomes and Kelly v. Respondents (Gomes/Kelly Mortgage Action)]: Ms Atas shall, by March 30, 2018, provide full particulars of all steps she wishes to take in respect to this action. These particulars should explain (a) why the issues she raises now would impact the judgment, (b) why she should be permitted to raise them now, after the judgment has been final since 2005 and has been paid in full, (c) when the issues she wishes to raise now first came to her attention, and why they were not raised at the time of this action. There shall be no other steps taken in respect to this proceeding without further order of this court. This direction applies to Ms Atas' (i) request to assess costs; (ii) request to serve a demand for confirmation of authority under R.15.02; proposed motion to set aside or vary pursuant to R.59.06; and (iv) intention to take any other step of any kind respecting this proceeding.

(2) **08-CV-364585** [Peoples Trust v. Atas (Wycliffe Mortgage Action)]: Peoples Trust shall deliver a statement showing its claimed balance owing on the Wycliffe Mortgage by January 31, 2018. Ms Atas shall deliver her response to this statement by March 30, 2018. Peoples Trust shall not respond or reply to Ms Atas' response; rather, this court shall provide further directions about settling the outstanding balance after exchange of materials. Peoples Trust has already provided disclosure respecting its mortgage enforcement costs in its affidavit of documents served April 28, 2009, Disclosure Brief for the Assessment served July 21, 2010, and further disclosure of the Disclosure Brief in documents provided to Ms Atas' then solicitor, Dr Hamalengwa on May 15, 2014.[284] Peoples Trust should provide further disclosure of back-up documents for claimed costs that were not included in this previous disclosure when it provides its statement showing the balance owing. Ms Atas should request any further disclosure she seeks in her response to Peoples Trust's statement of the balance owing. There shall be no other steps taken in respect to this proceeding without further order of this court.

(3) **08-CV-352871** [Peoples Trust v. Respondents (St George Street Mortgage Action)]: Peoples Trust shall deliver a statement showing its claimed balance owing on the St George Street Mortgage enforcement costs by January 31, 2018. Ms Atas shall deliver her response to this statement by March 30, 2018. Peoples Trust shall not respond or reply to Ms Atas' response; rather, this court shall provide further directions about settling the outstanding balance after exchange of materials. Peoples Trust has already provided disclosure respecting its mortgage enforcement costs in its affidavit of documents served November 28, 2008, and

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permitted to proceed, and I have fashioned an approach to accord them this opportunity in a way that should minimize expense to responding parties before some threshold of merit is shown by the respondents.

[284] Reply Affidavit of Christine Perri sworn March 10, 2015, para. 4(b).

Disclosure Brief for the Assessment served March 22, 2010.[285] Peoples Trust should provide further disclosure of back-up documents for claimed costs not included in this previous disclosure at the same time that it provides its statement showing the balance owing. Ms Atas should request any further disclosure she seeks in her response to Peoples Trust's statement of the balance owing. There shall be no other steps taken in respect of this proceeding without further order of this court.

(4) **Actions 98-CV-148544** (Aarko v. Respondents), 9**8-CV-2438666** (Stable Electric v. Respondents), **99-CV-176687** (Atas v. Susman), **01-204981** (Royal Bank v. Respondents), **02-CV-222834** (Respondents v. Daimin), **(02-CV-236212** (Atas v. Pinkofsky Lockyer), **04-CV-272499** (Respondents v. Balitsky), **04-CV-272500** (Respondents v. Greer), **07-CV- 339942** (CIBC v. Atas), **07-CV-346185** (Atas v. Davies McLean Zweig), **08-CV-350523** (Toronto v. Respondents), **10-CV-400425** (Toronto v. Respondents). Ms Atas shall advise this court, under oath, of the status of these proceedings by March 30, 2018, including whether the judgment has been satisfied. Where the proceeding has been disposed of on a final basis (including all appeals), Ms Atas shall provide a copy of the final order and shall certify in an affidavit that she does not intend to take any further step in the proceeding, or, if she does intend to take any further steps, what those steps are. If Ms Atas does not have a copy of the final order, she may attest to it by way of affidavit. If any of these proceedings has not been disposed of finally, Ms Atas shall provide a list of the name(s), lawyer(s) and addresses for service of all parties to that litigation.

(5) The following actions are dismissed with the consent of the respondents: **11-CV-429572** (Atas v. Dale & Lessman LLP), **11-CV-429573** (Atas v. Dale & Lessman LLP), **14-507402** (Atas v. Steinberg), **14-CV-507409** (Atas v. Bresver Grossman Scheininger & Chapman LLP), **14-CV-507414** (Atas v. Seon Gutstadt Lash LLP) and **14-CV-507421** (Atas v. Bresver Grossman Scheininger & Chapman LLP).[286] If any parties to these proceedings claim costs in respect to them, they shall provide bills of costs and written argument of no more than five pages to this court by January 31, 2018. Ms Atas shall provide any responding submissions by March 30, 2018. There shall be no reply submissions or oral costs submissions in respect to these proceedings unless this court subsequently orders otherwise.

(6) **11-CV-429140** (Atas v. Steinberg): Ms Atas states that she has no knowledge of this proceeding. The court shall give further directions about this proceeding at the next case management conference.

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[285] Reply Affidavit of Christine Perri sworn March 10, 2015, para.4(a).

[286] Affidavit of Joshua Makori sworn March 2, 2015, para. 7. It may be that some of these proceedings have been dismissed administratively already.

(7) The following actions appear to be disputes over legal fees or claims against lawyers: **05-CV-302734** (Respondents v. Baker Schneider Ruggiero), **05-CV-302736** (Respondents v. Côté), **05-CV-302742** (Respondents v. Kagan Shastri), **05-CV-302891** (Côté v. Respondents), **06-313064** (Respondents v. Kagan Shastri), **06-CV-315208** (Respondents v. Brooker), **06-CV-315671** (Respondents v. Steinberg Morton), **06-SC-39478** (Brooker v. Atas), **07-CV-343745PD1** (Respondents v. Kagan Shastri), **07-SC-50451** (Baker Schneider Ruggiero v. Respondents), **08-CV-349206PD3** (Respondents v. Brooker), **08-CV-354613** (Respondents v. Steinberg Morton), **09-CV-391695** (Respondents v. Kimberley), **10-CV-411421** (Respondents v. Mitchell and Canizares), **10-CV-411424** (Respondents v. Bresver), **10-SC-99076** (Brooker v. Respondents), **11-CV-429140** (Respondents v. Steinberg)**, 11-CV-429148** (Atas v. Steinberg), **11-CV-429176** (Respondents v. Mitchell), **14-CV-504825** (Respondents v. Stancer Gossin Rose). Any lawyer or law firm that is a party to any of these proceedings, and which claims that it is still owed legal fees by Ms Atas for professional services rendered, shall provide the following information to the court by January 31, 2018:[287]

(a) The amounts claimed (including a breakdown of fees, disbursements, other claims, and interest);

(b) The time during which the professional services were rendered;

(c) The court file numbers in which these claims have been asserted;

(d) Any court orders that have been made in respect to these claims (other than this judgment and case management orders made by this court or by Stinson J.).

Ms Atas shall provide the following information by March 30, 2018 in respect to the information furnished by the solicitors pursuant to this direction:

(a) Whether she disputes the retainer;

(b) Whether she disputes the quantum claimed for fees, disbursements, other claims, and/or interest;

(c) Whether she has paid anything on account of these claims;

[287] Any lawyer or law firm that has been paid or which does not wish to pursue further any claim for fees, need not respond to this direction.

(d) Aside from counterclaims, whether there is any basis on which she disputes her obligations to pay these claims.

In respect to any claims advanced by Ms Atas against any of the lawyers and law firms, she shall, by March 30, 2018, provide the court with the following information:

(a) The amount she claims against each lawyer or law firm, in total;

(b) All of the reasons she claims those amounts from each lawyer or law firm;

(c) When and in what proceeding she first asserted the claims she now wishes to pursue against the lawyers.

(8) The following actions appear to concern mortgages on the Wycliffe Property or the St George Street Property and appear to have been concluded on a final basis: **07-CV-336072** (Peoples Trust v. Respondents), **07-CV-341210** (Hilson v. Respondents), **07-CV-342059** (Peoples Trust v. Atas), **08-CV-359261** (Hilson v. Respondents). Ms Atas shall confirm the status of these proceedings, under oath, by March 30, 2018.

(9) The following actions appear to be claims arising from the Gomes/Kelly Mortgage Enforcement Action: **08-CV-346821PD3** (Respondents v. Pires). Ms Atas shall advise whether she intends to continue with this proceeding by March 30, 2018. No other steps shall be taken in this proceeding pending the next case management meeting and pending further order of this court.

(10) **10-CV-400035** [Stancer Gossin v. Atas (the First Defamation Action)]: the plaintiffs shall advise the court by January 31, 2018, if they wish to continue with this proceeding to trial, and if they do, their proposed schedule for steps to complete the trial. Ms Atas shall provide her position to the court by March 30, 2018.

(11) The following actions appear to arise from the enforcement of the Peoples Trust mortgages: **10-CV-411415** (Respondents v. Peoples Trust), **11-CV-429151** (Respondents v. Chahal), **11-CV-429180** (Atas v. Peoples Trust). Ms Atas shall advise whether she intends to continue with these proceedings by March 30, 2018. No other steps shall be taken in these proceedings pending further order of this court.

(12) The following actions appear to include unpaid commissions held by Sutton Group following receipt of a notice of garnishment, and claims against Sutton Group for various alleged conduct : **12-SC-6446** (Atas v. Sutton), **13-SC-21972** (Atas v. Sutton) and **14-CV-498399** (Atas v. Sutton). Sutton Group shall advise by January 31, 2018 of the quantum (if any) of the amount it holds that it

acknowledges is owed to Ms Atas, and whether it objects to paying this amount into court. Ms Atas shall provide her responding position by March 30, 2018. No other steps shall be taken in these proceedings pending further order of this court.

(13) In subparagraph (4), above, I give directions respecting proceedings listed in Schedule 1 about which this court has little or no information concerning the status of those proceedings. Ms Atas, in her cross-examination, did not know how many times she had been involved in legal proceedings before the Gomes/Kelly Mortgage Action in 2004.[288] Eight such proceedings are listed in Schedule 1. It is not necessary for the court to concern itself with ancient proceedings that have been concluded. On the other hand, the court wants a complete list of every proceeding that is still outstanding. Ms Atas is directed to identify to the court by March 30, 2018, under oath, any additional legal proceedings in which either respondent is a party that are not listed on Schedule 1, and the status of those proceedings:

(a) of any kind, concluded or otherwise, from June 1, 2004 to the present; and

(b) commenced at any time prior to January 1, 2004 if the proceeding has not been finally disposed of or if Ms Atas intends to seek to re-open, vary or set aside the final disposition.

(14) In her materials, Ms Atas proposes consolidating outstanding legal proceedings into two proceedings, with amendments to the pleadings.[289] The proposed consolidations do not seem fair to many of the litigants (for example, why should the Chahals be caught up in litigation between Ms Atas and her former solicitors). However, some sort of consolidation or streamlining of proceedings and some amendment to pleadings may be appropriate once it is decided whether and which proceedings will continue. The court will give further directions on this issue in due course, after the steps outlined above have been completed.[290]

(15) In respect to all of these matters, if Ms Atas requests copies of any documents from the other side, she will have to pay for these copies. Given her approach to these issues, payment will have to be made in advance before an opposite party will be required to copy materials for Ms Atas.

(16) Ms Atas has abused the court process and has put the administration of justice to extraordinary and wasteful expense. She has, in past, been ordered to pay

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[288] Cross-examination of Nadire Atas, June 3, 2015, pp.45-50, QQ.201-234.
[289] Affidavit of Joshua Makori sworn March 2, 2015, paras. 4-6.
[290] Ms Atas states repeatedly that she needs counsel in order to plead properly. Mr Napal was counsel of record until the spring of 2016, after which he left the brief. The respondents are currently self-represented.

outstanding court fees. It is not clear that she has ever done so.[291] To the extent that Ms Atas has ever been eligible for fee waivers by reason of her financial circumstances, she is no longer entitled to that benefit by reason of her conduct as a litigant. Henceforth Ms Atas shall be required to pay ordinary court filing fees unless a judge orders otherwise in a particular case.

(17) The corporate respondent need not be represented by counsel in any proceeding; any previous orders to the contrary are set aside, prospectively. Ms Atas has sued a great many of the lawyers who acted for her and it would likely be very difficult for her to find counsel willing to act for her or for her company given that history. Requiring Ms Atas to obtain counsel for her company would create an unrealistic burden for her. Ongoing active case management can address issues that arise by the absence of counsel for the corporate respondent. Of course, this provision does not preclude Ms Atas from retaining counsel for herself or the corporate respondent.

[343] There is also the matter of outstanding costs orders. The position of Peoples Trust is complicated by outstanding issues respecting the assessment of mortgage enforcement costs. Those issues will be decided first, before any other issues respecting matters between Peoples Trust and Ms Atas. Once those have been decided, then the balance of costs owed by Ms Atas (if any) will be crystallized. It appears that, as of September 2014, there were nine outstanding costs orders in favour of Peoples Trust against the respondents totaling $24,500.[292] This court has ordered a further $1,000.

[344] In respect to all costs orders made against Ms Atas, this court needs to receive the following information:

(a) the proceeding in which the order was made;

(b) the party in whose favour the order was made;

(c) the date of the award;

(d) the quantum of the award;

(e) the applicable rate of interest on the award;

(f) the payment terms on the award;

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[291] If she did not, she need not do so now. On March 27, 2015, at a case management conference, I directed "I decline to deal further with the issue of payment of court fees and the waiver of court fees up to and including all filings to March 27, 2015."

[292] Affidavit of Cristine Perri sworn September 23, 2014, para. 137.

(g) any payment(s) made on account of the award.[293]

With this information in hand, the court can then consider whether non-payment of outstanding costs awards, in a particular case, should be a factor in deciding whether that case should be permitted to proceed further and if so, on what terms.[294] Any party seeking payment of an outstanding costs order shall provide his information to the court by January 31, 2018. Ms Atas shall provide her position on these issues to the court by March 30, 2018.

[345] The respondents have filed, from time to time, uncertified copies of court transcripts. I have dealt with this when it has arisen and come to my attention. It is concerning, however, because uncertified transcripts are generally drafts that have been provided by a court reporter which have not been certified because the reporter has not yet been paid in full. The obligation to pay for the transcript is not contingent on the party seeking a certified copy after reviewing a draft of the transcript. Ms Atas shall advise the court, by March 30, 2018, under oath, if there are any transcripts she has ordered during the course of the s.140 application for which she has not paid, including the amount owed and any reason(s) for non-payment.

[346] The applicants shall provide a draft judgment to the court by January 19, 2018. Ms Atas shall provide her approval to the draft judgment or her comments about the draft judgment to the court by February 2, 2018. The parties shall also identify any typographical or similar errors in the judgment that they wish corrected and shall identify any issues in this application which they believe have not been decided in this judgment, at the same time that they provide the court with their draft orders. All parties are reminded that this process of settling the order is not an opportunity to re-argue the application or to debate the decisions that have been rendered.

Delay Releasing this Decision

[347] The application was argued on the merits in September 2015. Based on my other commitments at the time and the anticipated work to prepare this decision, I told the parties that they should not expect to receive a decision before March 2016.

[348] Before I began serious work on this decision, I was advised of the applicants' motion to adduce fresh evidence and the intended Current Defamation Proceedings and related injunction

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[293] The applicants sought an order "that all of the outstanding costs orders are in effect and are enforceable against the respondents named in such orders" and for compliance with those orders (notice of application, para. 1(m)). Courts speak but once on a topic. The costs orders have been made; of course they are still in effect and enforceable to the extent that they have not been paid. There is no need for this court to repeat them. This court will address any disagreement about the aggregate quantum of outstanding costs awards in the case management process.

[294] In the notice of application, the applicants sought an order that no leave be granted for proceedings against any person to whom the respondents owed an unsatisfied costs order (notice of application, para. 1(f)). I decline to grant this relief on a blanket basis. Non-payment of costs orders are a factor – but not the only factor – that may be considered when deciding whether to grant permission to seek leave, and whether to grant leave under s.140(3). See *Landmark Vehicle Leasing* v. *Marino*, 2011 ONSC 1671.

motions. Ms Atas opposed the injunction, opposed the introduction of fresh evidence, brought her own motion to adduce fresh evidence (which was dismissed) and advised that she would bring a recusal motion. These matters all unfolded between December 2015 and September 2016. Ms Atas did not provide materials for the recusal motion until September 6, 2016, and at that time they were incomplete. The process of completing her materials, obtaining responding materials, and scheduling return of the recusal motion took five months. In February 2017 the recusal motion was heard, dismissed from the bench, and this court advised of its decision to declare Ms Atas vexatious with these reasons to follow.

[349] It has taken me roughly ten months to finalize these reasons. As may be gathered by their length and complexity, this was no small task. As is the ordinary case for judges hearing civil matters in Toronto, the regular schedule of sitting and writing decisions carries on during the period of a reserve. While it would have been possible to ask the Regional Senior Justice for extra time out of court to prepare these reasons earlier, the Ontario Superior Court has been under considerable pressure, in all lines of the court's work, and particularly in the criminal area (as a result of the *Jordan* decision), and removing a judge from regularly scheduled court time creates a burden for the system and his colleagues. In my judgment there were no exigent circumstances in this case that justified devoting extra resources to this case – the reserve would be decided when time permitted, and the parties would just have to wait until the decision was completed. I regret, but do not apologize, that it has taken as long as it has.[295]

Future Case Management

[350] I have advised the parties that, at some point, I will ask the Regional Senior Justice to replace me as case management judge. Case management appointments are not sinecures intended to endure for many years. However, case management does not work if the case management judge changes frequently. The s.140 application was a necessary initial step in managing the underlying litigation. It should be possible to streamline the underlying litigation, to dispose of cases that will not be proceeding, to resolve outstanding issues around mortgage enforcement costs which are context for other claims, decide whether Ms Atas may proceed on any of her proposed attacks on the Gomes/Kelly Mortgage Action judgment, and to generally place all claims on a proper footing for dismissal or to proceed. I intend to carry on in the role to which I have been assigned to bring the underlying litigation under control in this way. Given the extraordinary judicial resources that have been brought to bear on these matters in the s.140 application process, I see it as my continuing duty to carry on in my role.

[351] The next case management conference shall be:

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[295] Ironically, it was Ms Atas alone who felt moved to complain about this delay – ironic since it was her conduct in publishing the defamatory materials and then vexatiously litigating the fresh evidence and recusal motions that was the principal reason for the delay from September 2015. In view of the extraordinary delays caused to opposing parties by Ms Atas' incapacity, and her approach to that issue in the litigation, for them, Ms Atas' complaints about delay in the s.140 application surely crosses the line from irony to effrontery.

(i) scheduled by my office in February 2018 to settle the judgment (if I conclude that a conference is needed for this purpose after reviewing the parties' draft judgments and submissions);

(ii) scheduled by the parties through my office if any party wishes a case conference before the next conference scheduled by the court;[296] or

(iii) scheduled by my office in April 2018, after the deadlines for receipt of materials from the parties in accordance with this judgment.

Denouement

[352] As I said at the outset, it is obvious that Ms Atas is a vexatious litigant. After a comprehensive review of the history of the underlying litigation and related conduct, a reasonable approach to moving forward emerges. What does not emerge from the record, what is only hinted at in secondary references and issues such as mental capacity, is the human story behind Ms Atas' conduct. What has brought her to this? What will it take for her to move forward, constructively, instead of remaining mired in ancient grievances, with little prospect of receiving satisfaction for them. There comes a point when it is better to take one's losses and move forward. And the law contemplates, even encourages, fresh starts.

[353] Ms Atas has chosen to reveal little about herself in her defence of this application. I know that Ms Atas has been a real estate professional for many years. I know from my interactions with her that she is intelligent, tactical, capable of complex strategizing about legal matters, and generally good with words.[297] Prior to 2003, she had done well enough to acquire two income properties, though she did not seem to have much equity in them. She seems to me to have had a lot going for her.

[354] But really, who is Nadire Atas? How did she find herself in such financial difficulties over her two pieces of real estate? What was her mental illness and what was its practical effect on her life? I learned from the record that in the darkest days of her financial collapse, when she was forced from her home, she used her position as a real estate agent to access lockboxes of houses that were empty and for sale to stay in those houses temporarily, conduct for which she ran afoul of her professional regulator and the criminal law, and which was apparently addressed in both cases by treatment of mental illness. These points, to be gleaned from the record but not

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[296] The parties are reminded that communications seeking to schedule case management conferences are not occasions for the parties to make arguments to the court. The court needs to know (a) who wants the case management conference, (b) what the purpose is of the case management conference, (c) the time the parties estimate is required for the case management conference, and the parties' available dates.

[297] To the point where she said that she felt belittled when I corrected her repeated misuse of the word "incredulous". Only a highly literate person would care about such a thing, and her avowed sensitivity led her to miss the point of the comment, subtle though it may have been: the person who posted the defamatory comments on the internet made the same mistake repeatedly – an extraordinary coincidence if the postings came from someone other than Ms Atas.

put directly to the court by Ms Atas, hint at a human dimension Ms Atas' conduct that could provoke empathy.

[355] But that was not the basis of Ms Atas' defence of the application, and the record on the personal dimension – the events in Ms Atas' life that brought her to behave so badly – are occluded by an opaque and doomed defense of the indefensible. Ms Atas would do well to bear these points in mind if she seeks relief under s.140(3): the court would likely need to be satisfied that she would not continue her past conduct before granting her access to the civil justice system again.

[356] The court is left with the impression that she truly does not understand that she has acted very badly and has hurt a lot of people in the process of doing so. An order under s.140 of the *Courts of Justice Act* is seldom made, and only in an extreme case – an extreme case such as this one.

Conclusion: Order and Costs

[357] The application is granted.[298] Order to go as follows:

(1) The relief sought in paras. 1(a), (b), (c), (d) and (j) of the notice of application is granted.

(2) A *Chavali* order shall also issue prohibiting the respondents from commencing any application under section 140(3) of the *Courts of Justice Act* for leave to proceed with a proceeding or step in a proceeding in any court in Ontario until such time as they have obtained an order from the case management judge giving them permission to bring an application under section 140(3) for leave to proceed with a proceeding or step in a proceeding which order shall be obtained through a motion in writing and on a without notice basis. The motion shall be accompanied by (i) an affidavit, not exceeding ten pages in length (double-spaced), that outlines the merits of the proposed proceeding or step; (b) explains the extent (if any) to which the respondents have satisfied the outstanding costs awards against them; and (c) a copy of these reasons and the formal judgment issued in accordance with these reasons.

(3) If the court is of the view that the proposed application for leave to proceed has a sufficient degree of merit, the court will direct that a full application for leave to proceed be prepared which shall then be served on the responding parties and a date for the hearing of that application will be set thereafter. A copy of this order

[298] I decline to grant the relief sought in para. 1(i) of the notice of application, which permits for summary dismissal by the registrar of proceedings commenced in violation of this order. Such proceedings may be brought to the attention of the case management judge, who may dispose of them as is appropriate.

is to be sent to every Region of the Superior Court of Justice with a direction that no application by the respondents under section 140(3) for leave to proceed with a proceeding or step in a proceeding is to be filed or listed for hearing unless it is accompanied by an order, as set out above.[299]

(4) Neither of the respondents shall commence or continue (a) court proceedings in the Federal Court of Canada or in any court outside Ontario; or (b) administrative proceedings of any kind (including, without limitation, complaints to any professional or regulatory body or claims to a human rights commission or tribunal) unless they simultaneously provide a copy of these reasons and the formal judgment resulting from this decision to the court, body, commission or tribunal to which the claim or complaint is made.

(5) The respondents shall not seek to commence any criminal proceedings or make complaint to any peace officer without simultaneously providing the judicial officer (whether a justice of the peace or other judicial officer) or the peace officer (as the case may be) with a copy of these reasons and the formal judgment resulting from this decision.[300]

(6) As provided in paragraph 1(b) of the notice of application, as indicated by this court to the parties, the respondents are granted leave to pursue an appeal of this decision to the Court of Appeal without the need to apply further for leave under s.140(3) of the *Courts of Justice Act*.

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[299] *Chavali v. Law Society of Upper Canada*, [2006] O.J. No. 2036**.** The applicants sought an order that the permission to bring a leave motion be sought from the Regional Senior Justice or his/her designate (notice of application, paras. (1)(e), (h)). The office of the Regional Senior Justice is exceptionally busy and should not be required to deal with these requests. Rather, the requests should be made to the case management judge, who will be immersed in the history of Ms Atas' litigation and will be in a position to decide such requests efficiently. If the case management judge is unavailable, or if there is no case management judge at the time of a particular request, then the decision should default to the Regional Senior Justice or his/her designate.

[300] The Court of Appeal in *Foy* v. *Foy (No.2)*, 26 OR (2d) 220, 102 DLR (3d) 342 (CA), per Howland C.J.O., concluded that "proceedings" within the meaning of s.140 did not include criminal proceedings. In that same decision, the Court of Appeal held that the jurisdiction under s.140 was part of, but not the whole of, the court's inherent jurisdiction to control its own process. The holding in *Foy* is still good law on this point, and binding upon this court. However, I note that the Court of Appeal's finding was not that there was no inherent jurisdiction, supplementary to the authority granted in s.140, to issue an order controlling a vexatious litigant's ability to commence criminal proceedings. There have been several disciplinary complaints made by Ms Atas, and she has repeatedly accused parties to the litigation of theft, fraud, conspiracy, and criminal behaviour in general. With some reluctance I conclude that I am bound by *Foy* not to order Ms Atas not to make complaints or initiate criminal proceedings. However, there is nothing in *Foy* that precludes an order that Ms Atas inform the officials responsible for deciding whether to pursue a criminal prosecution of Ms Atas' history of vexatious harassment.

(7) This judgment is not stayed pending any appeal that may be brought, without prejudice to any stay that may be granted by an appellate court of competent jurisdiction.

(8) Except where this court has expressly ordered otherwise in the formal judgment resulting from this decision, this decision does not decide any question between the parties in any of the underlying proceedings.

(9) Any fee waivers for the respondents are set aside. Ms Atas shall henceforth pay any applicable court fees for any litigation in which she is a party unless she obtains an order for a fee waiver from the case management judge. Ms Atas is ordered not to request or accept fee waivers unless and until Ms Atas has obtained an order for a fee waiver from the case management judge.

(10) The parties shall follow the directions set out in paragraphs 342-344, above, in respect to the underlying proceedings.

(11) Any other direction given in this judgment shall be followed and shall be included in the formal judgment, including, without limitation, the stay orders in paragraphs 340-341, above and the ancillary orders in paragraphs 345-346, above.

(12) The applicants shall provide written costs submissions by January 31, 2018. These shall include bills of costs, any pertinent offers to settle, and written submissions of no longer than fifteen pages. The respondents shall provide written responding submissions by March 30, 2018. These may include a bill of costs, any pertinent offers to settle, and written submissions of no longer than fifteen pages. There are no restrictions on the number of authorities that may be included by either side. There shall be no reply or oral costs submissions unless I hereafter direct otherwise.

(13) Ms Atas indicates in one of her affidavits that she seeks costs for motions brought by Peoples Trust for orders that she be declared vexatious, returnable January 19, 2012 and March 19, 2012. Ms Atas claims costs for these appearances. She shall provide her bills of costs, any pertinent offers, and written submissions no longer than ten pages in length, single-spaced, by January 31, 2018. These submissions shall also include Ms Atas' argument as to why she believes she is entitled to costs of these appearances.[301] The applicants shall provide their responding submissions by February 28, 2018.

[301] It is not clear to me that there is a basis for Ms Atas' position that she is entitled to these costs. At the appearance on January 19, 2012, McEwen J. ordered that costs of that day "are reserved to the motions judge or judges who

(14) A copy of these reasons and the formal judgment should be placed in each file listed in Schedule 1 that has not already been disposed of finally. The applicants will prepare a list of the files they say fit into this category when they provide their draft judgment; Ms Atas will provide her comments on this list at the time that she provides her comments on the draft judgment.

[358] There has been a history of inappropriate direct communications with the court which have, at times, devolved into argument about the directions given by the court, or advocacy respecting the parties' positions. This is not to continue. The parties are not to communicate with the court other than:

(a) where expressly authorized to do so by the court;

(b) to request a case management conference or other appointment before the court; or

(c) with the consent of all affected parties.

[359] I have generally provided first deadlines of January 31, 2018 for the applicants and a common deadline of March 30, 2018 for Ms Atas respecting steps directed by this judgment. If any party wishes to extend a deadline, this may be done either by consent order delivered to my office to my assistant's attention, or by motion in writing to be served on seven days' notice and filed by delivery to my assistant's attention. Extensions should be sought prospectively if reasonably possible to do so. The parties should not expect any automatic extensions that are not on consent; I consider the deadlines I have imposed to be reasonable given the work involved. I am aware that Ms Atas currently has a hearing in the Contempt Proceedings scheduled in March 2018 and I have taken this into account in setting a generous deadline for her of March 30, 2018. The parties should not expect that the court will be favourably disposed to extend the times stipulated for the process to settle the formal judgment.

D.L. Corbett J.

Released: January 3, 2018[302]

ultimately hear the outstanding motions. One of the outstanding motions was to lift the notings in default, and those costs were awarded against Ms Atas.

[302] This judgment is as amended by endorsement dated February 23, 2018.

Schedule 1 – List of Proceedings

Proceeding	**Steps Taken**
98-CV-148544	Martti Aarko v. Respondents
98-CV-2438666	Stable Electric v. Respondents
99-CV-176687	Atas v. Leonard Susman
01-CV-204981	Royal Bank of Canada v. Respondents
02-CV-222834	Respondents v. William Daimin
02-CV-236212	Atas v. Pinkofsky Lockyer
04-CV-272499	Respondents v. Jerry S. Balitsky
04-CV-272500	Respondents v. Linda H. Greer
04-CV-279726	Gomes and Kelly v. Respondents (**Gomes/Kelly Mortgage Action**).
05-CV-302734	Respondents v. Baker Schneider Ruggiero
05-CV-302736	Respondents v. Patrice A.J. Côté
05-CV-302742	Respondents v. Kagan Shastri
05-CV-302891	Patrice A.J. Côté v. Respondents
06-CV-313064	Respondents v. Kagan Shastri
06-CV-315208	Respondents v. David Brooker
06-CV-315671	Respondents v. Steinberg Morton
06-SC-39478	David J. Brooker v. Atas
07-CV-336072	Peoples Trust v. Respondents
07-CV-339942	CIBC v. Atas

07-CV-341210	Janet Louise Hilson v. Respondents
07-CV-342059	Peoples Trust v. Atas
07-CV-343745PD1	Respondents v. Kagan Shastri, Ira T. Kagan, Rahul Shastri, David Winer, Patrice A.J. Côté, Baker Schneider Ruggiero and David J. Sloan
07-CV-346185	Davies McLean Zweig
07-SC-50451	Baker Schneider Ruggiero v. Respondents
08-CV-346821PD3	Respondents v. Pires, Atlantic (HS) Financial Corp. Frank S.C. Pa, Rui Ruivo, Ron Hatcher
08-CV-349206PD3	Respondents v. David Brooker
08-CV-350523	Toronto v. Respondents: collections action
08-CV-352871	Peoples Trust v. Atas (Peoples Trust St George Street Mortgage Action).
08-CV-354613	Respondents v. Steinberg Morton Frymer, Taras Kulish and Moses Muyal
08-CV-359261	Janet Louise Hilson v. Respondents
08-CV-364585	Peoples Trust v. Atas (Wycliffe Mortgage Action)
09-CV-391695	Respondents v. Kimberley and Kimberley, Michael Harold Kimberley and Irene Mary Kimberley
10-CV-400035	Stancer Gossin Rose LLP v. Atas (**First Defamation Proceedings**)
10-CV-400425	Toronto v. Respondents
10-CV-411415	The Respondents v. Peoples Trust
10-CV-411421	Respondents v. Mitchell and Canizares
10-CV-411424	Respondents v. Bresver
10-SC-99076	David Brooker v. Respondents

11-CV-429140	Respondents v. Ralph Steinberg
11-CV-429148	Atas v. Ralph Brian Steinberg
11-CV-429151	Respondents v. Krishnan and Nutal Chahal
11-CV-429176	Atas v. Mitchell
11-CV-429180	Atas v. Peoples Trust
11-CV-429572	Atas v. Dale & Lessman LLP, Christina J. Wallis, Matthew Cameron, Garth Dingwall
11-CV-429573	Atas v. Dale & Lessman LLP, Christina J. Wallis, Matthew Cameron, Garth Dingwall
HRTO 2011-09579-I	Atas v. Peoples Trust
HRTO 2011-09578-I	Atas v. Dale & Lessman LLP, Stikeman Elliott LLP and LSUC
HRTO 2011-09558-I	Atas v. LSUC
HRTO 2011-09588-I	Atas v. Steinberg and LSUC
12-SC-6446	Atas v. Sutton Group Realty Systems
13-SC-21972	Atas v. Sutton Group Realty Systems, Marija Semen, Trevor Schultz
14-CV-498399	Atas v. Sutton Group Realty Systems
14-CV-504825	Respondents v. Stancer Gossin Rose LLP
14-CV-507402	Atas v. Ralph Steinberg
14-CV-507409	Atas v. Bresver Grossman Scheininger & Chapman LLP, David Bresver, Peoples Trust and Michael Mitchell
14-CV-507414	Respondents v. Seon Gutstadt Lash LLP
14-CV-507421	Atas v. Bresver Grossman Scheininger & Chapman LLP, Peoples Trust, David Bresver, Michael Mitchell, Nicolas Canizares, Krishan Chahal and Nutal Chahal

14-CV-515899	Peoples Trust v. Respondents: s.140 Application (this proceeding)
16-CV-564078	Atas v. A.G. Ontario (*Rowbotham* application)

Schedule 2 – Case Management Conferences and Motions[303]

April 2, 2012	Stinson J. sets aside the assessment order made by Assessment Officer Fedson in **08-CV-352871PD2** on the grounds of "grave concerns that… Ms Atas lacked mental capacity" at the time of the assessment.
May 18, 2012	Toronto Civil Team Lead, Low J., directs case management and appoints Stinson J. as case management judge.
June 6, 2012	Initial case management meeting with Stinson J.[304]
July 3, 2012	Case Management meeting with Stinson J.
July 31, 2012	Case management meeting with Stinson J.
September 25, 2012	Stinson J. adjourns urgent motions brought by Ms Atas, at Ms Atas' request, respecting calculation of balances owed to Peoples Trust. Awards costs to Peoples Trust of $6,000 in one proceeding, and of $10,000 in another proceeding.
January 30, 2014[305]	On motion, Stinson J. finds Ms Atas to have legal capacity and discharges the PGT as her litigation guardian.
March 26, 2014	Comprehensive case scheduling direction: April 4, 2014: (i) Counsel for Ms Atas, Dr Hamalengwa, to serve notices of appointment of lawyer; (ii) counsel for Ms Atas to provide consent orders setting aside administrative dismissals; (iii) counsel for Peoples Trust to provide her position on writs of execution and assessment of costs. April 18, 2014: counsel for Ms Atas to take out formal order of Stinson J. discharging the PGT.

[303] This schedule summarizes case management steps as reflected in the record on the s.140 application and steps that took place after argument of the application on September 11, 2015. There may have been additional steps taken that are not reflected in this summary.

[304] I have not attempted to summarize the orders from case management meetings with Stinson J. on June 6, 2012, July 3, 2012 and July 30, 2012. These meetings were memorialized with minutes, rather than orders, and contain a great deal of narrative. Full text of these minutes are in the record.

[305] It seems from the record that there were probably multiple additional appearances before Stinson J. prior to January 30, 2014 respecting the issue of legal capacity, but the record of these appearances did not appear to be in the record on the s.140 application.

	May 8, 2014: counsel for Ms Atas to provide counsel for Peoples Trust advice "regarding the steps to be taken by Ms Atas including Rule 59.06 motions. May 26, 2014: counsel for Peoples Trust to provide "proposed timetable and preferred approach" for s.140 application and to canvass other parties whether they intend to participate in the application. May 26, 2014: further case conference for Peoples Trust actions. June 30, 2014: (i) counsel for Ms Atas to provide proposed amendments to pleadings in all actions that Ms Atas proposes to amend; (ii) counsel for Ms Atas to commence any new proceedings Ms Atas intends to bring. July 21, 2014: further case conference for all other actions.
September 19, 2014	Himel J. accepts suggestion of Stinson J. that he be replaced as case management judge; D.L. Corbett J. appointed case management judge "for all of Ms Atas' matters"
October 16, 2014	Initial case management conference with D.L. Corbett J.
November 25, 2014	1. Order to provide draft minutes of case management meeting of July 21, 2014 to Stinson J. 2. Order that Raj Napal be counsel of record in all proceedings involving Ms Atas and her company. 3. Order to assist in settling order of Stinson J. removing the PGT as litigation guardian for Ms Atas. 4. Order to assist in issuing orders to set aside administrative dismissal of any actions involving Ms Atas. 5. Order that parties not communicate with court without copying other parties. 6. Order confirming that Stinson J. did not recuse himself from these proceedings, but that he was replaced administratively by decision of Himel J., the then Head of the Toronto Civil Team 7. Order confirming order of Stinson J. that no steps be taken in any Ms Atas proceedings pending "full determination of the s.140 proceedings", without prejudice to any party requesting an order from the case management judge or permission from the case management judge to bring a motion or other step in any proceeding. 8. "No further proceedings shall be commenced by Ms Atas pending full determination of the s.140 application, except with leave of the case management judge." 9. Order that issues concerning outstanding court fees be addressed at the next case management meeting. 10. Order that s.140 application (including affidavits of Yen Wong, Justin Anisman and Christine Perri) was served on Ms Atas the date of this case management conference.

	11. Order that one copy of materials need to be served to effect service on both Ms Atas and the corporate respondent. 12. Directions for steps to assist in settling order of Stinson J. dated April 2, 2012. 13. Order setting timetable for s.140 application with a return date in July or August 2015. 14. Order that parties need not re-serve materials previously served in this application when serving their application records in May and June 2015. 15. Order that next case conference be in March 2015 (mis-dated 2014) on a date to be fixed by the case management judge.
March 27, 2015 (mis-dated 2014)	1. September 11, 2015 set for argument of s.140 application on the merits. "Applicants shall have 2.5 hours for argument in the aggregate; counsel for Ms Atas shall have 2.0 hours for argument." 2. Summary of status of original mortgage enforcement action (**04-CV-279276**). Ms Atas took the position that there remained outstanding from those proceedings an assessment of costs of mortgage enforcement paid by her to discharge the mortgages. 3. Directions to the parties if any material disagreements continue over the events at the case conference before Stinson J. on July 21, 2014. 4. Directions to ensure that the orders of Stinson J. removing the PGT as litigation guardian for Ms Atas are issued and entered. 5. Direction respecting court fees issue to March 27, 2015. 6. Order that Ms Atas may not move to set aside previous orders in underlying proceedings on the basis of newly discovered evidence, but that she may provide information about her intended future litigation in her responding application materials, and order permitting Ms Atas to deliver supplementary evidence in this regard by April 10, 2015. 7. Order confirming that "Mega Corp." is a trade name of Tom Pires and does not, in law, exist. 8. Order to include an additional action in the scope of case management. 9. Order giving directions for an appearance to consider an order adding three further actions to the scope of case management. 10. Order respecting cross-examinations scheduling. 11. Order re scheduling of filings for the s.140 application. 12. Order directing that no motions be brought respecting administrative dismissals pending decision on the s.140 application. 13. Order scheduling next case management conference for June 12, 2015.
April 8, 2015	1. Order adding three additional actions to case management. 2. Direction noting that MCS Consultants does not appear and "may no longer exist." 3. Direction noting that Mr Bush advises that Devonleigh is his sole

	proprietorship and not a corporation. 4. Direction noting that there may be related garnishment proceedings that may be brought into case management at the next case management conference. 5. Order that "[a]ll actions under case management are stayed pending final determination of the s.140 application…."
April 27, 2015	1. Order directing Ms Atas to deliver motion materials if she wishes to move to vary case management order of March 27, 2015 "that the s.140 application be returned before me on the merits on September 11, 2015." 2. Order staying all proceedings to which Ms Atas is a party and ordering all such actions brought into common case management. 3. Direction respecting the authority of the court deciding the s.140 application to determine the scope of any remedy that may be ordered. 4. Direction respecting the scope of evidence on the s.140 application to include any proceedings involving the respondents and not just matters involving the applicants. 5. Direction respecting the actions under case management. 6. Order refusing examinations for discovery in the s.140 application but permitting Ms Atas to examine witnesses, on terms. 7. Directions concerning transcript costs. 8. Order extending time for Ms Atas' supplementary materials to May 1, 2015, and consequent extension in time for applicants' reply materials. 9. Direction respecting scheduling of examinations.
May 12, 2015	Endorsement from conference held May 8, 2015. Order refusing to permit Ms Atas to examine any of the proposed 20 witnesses she sought to examine on the application: "Ms Atas is restricted to cross-examining deponents who have delivered affidavits in the s.140 application (and not deponents of affidavits delivered in previous proceedings and attached as exhibits to affidavits delivered in this proceeding)."
June 12, 2015	1-3. Directions for intended motions by Ms Atas (a) that I recuse myself from the s.140 application for lack of jurisdiction; and (b) to strike portions of the applicants' affidavits on the s.140 application. 4. Order that Ms Atas not be permitted to move for a change of venue for the s.140 application. Order that Ms Atas not be permitted to move for an order that about 26 judges be precluded from hearing the s.140 application. 5-8. Miscellaneous directions including that the motions described in 1-3, above, be returned before me on June 30, 2015.
June 30, 2015	Ms Atas' motions that I recuse myself from the s.140 application and to strike portions of the applicants' affidavits were heard. The recusal

	motion was dismissed for reasons given orally (2015 ONSC 4777). The motion to strike was adjourned to the return date of the s.140 application (September 11, 2015).
July 30, 2015 (by teleconference)	1. Ms Atas sought an order for return of personal property allegedly held in storage by Peoples Trust following its entry into mortgaged premises. Request denied on basis that (a) it sought substantive relief in a stayed proceeding; (b) the request was not urgent; (c) the request had not been raised previously during case management and there was no need to address it before argument of the s.140 application on the merits. 2. Ms Atas sought an order disqualifying Ms Wallis from arguing the s.140 application on the basis that evidence provided on the application was on information and belief of Ms Wallis provided to Ms Perri. Ms Atas took the position that this evidence is "significant and contentious". Directions given for Ms Atas to deliver motion materials by August 14, 2015, returnable on September 11, 2015, if she wishes to pursue this issue. 3. Direction respecting agreement among counsel respecting exhibits. 4. Direction confirming that stay of proceedings includes three proceedings itemized in this paragraph. 5. Order refusing request to conduct further cross-examinations of Mr Anisman. 6. Order refusing Ms Atas' request for an order that any of Mr Caplan's clients disclose particulars of their insurance coverage. This request is relief sought in respect to stayed proceedings and is not in respect to the s.140 application.
September 11, 2015	Argument of s.140 application; decision reserved. Parties advised not to expect a decision in 2015. Costs to be addressed after release of the decision. "No proceedings shall be commenced by Ms Atas and all current proceedings remain stayed pending release of this decision or other order of this court."
December 21, 2015	First appearance respecting internet postings that are the subject of the Current Defamation proceedings and the applicants' motion to adduce fresh evidence.
January 5, 2016	Directions given for deadlines for respondents to deliver responding materials to applicants' motion to adduce fresh evidence relating to internet postings posted after completion of final argument on the s.140 application.
January 5, 2016	Interim injunction granted in Current Defamation Proceedings prohibiting Ms Atas from posting any statements of any kind about the moving parties or their law firms and associated persons and directing Ms Atas to

	remove such postings already made by her,
March 18, 2016	Hearing of applicants' motion to adduce fresh evidence. Motion granted and timetable set for Ms Atas to deliver any responding materials to the fresh evidence and for the parties to deliver brief written argument respecting the fresh evidence and the responding evidence adduced by Ms Atas.
Undated	Chambers endorsement settling order from March 18, 2016
April 4, 2016	Case management order respecting the Current Defamation Proceedings for exchange of pleadings and materials on the motion for an interlocutory injunction. Ms Atas advised that she intended to move for an order that I recuse myself from this proceeding. I directed that she could bring such a motion by serving and filing motion materials to this effect, but that until she does so the schedule for the case will be unaffected by her statement that she intends to bring the motion. I also directed that the plaintiffs need not prepare responding materials until I had reviewed any materials delivered by Ms Atas on the proposed motion.
April 4, 2016	Case management order in the s.140 application in respect to proposed recusal motion from Ms Atas and withdrawal of Mr Napal as solicitor of record for Ms Atas. In respect to the proposed recusal motion, I directed Ms Atas that she should serve and file motion materials for recusal if she wished to proceed with that motion. I directed that I would provide further directions respecting any recusal motion once I had reviewed Ms Atas motion materials. I directed that "Ms Atas' statement that she intends to bring recusal motions does not have the effect of staying or delaying any other steps in these proceedings. The timetable… remains in place and is to be followed." In respect to Mr Napal's departure from the case, I gave directions respecting completion of the steps required by virtue of the fresh evidence. Provided that was done, I directed that Mr Napal need not bring a motion to be removed from the record and that he would be released from the record once the fresh evidence steps were completed. Ms Atas would be self-represented or would have to obtain new counsel for the proposed recusal motion.
April 12, 2016	Directions for applicants' materials in the Contempt Proceedings. Directions re responding materials and pleadings from Ms Atas on the motion for interlocutory injunction. Costs of $1000 + HST awarded against Ms Atas, payable within 14 days. Direction precluding Ms Atas from seeking leave to appeal the interim injunction granted in January 2016. Direction that if Ms Atas proposes to assert a counterclaim in the Current

	Defamation Proceedings, she plead the counterclaim in a defence and counterclaim after which the court will consider the propriety of the counterclaim and provide further directions.
June 8, 2016	Directions respecting exchange of materials on the motion for interlocutory injunction and conduct of cross-examinations. Direction fixing September 6, 2016 for argument of interlocutory injunction. Direction that Ms Atas deliver her statement of defence in the Current Defamation Proceedings by June 30, 2016. Directions to obtain a date for the Contempt Proceedings in Civil Practice Court on June 20, 2016. Directions respecting proposed motion for an order that AG Ontario pay for counsel for Ms Atas. Directions that if Ms Atas fails to pay the outstanding costs order of $1,000 by August 15, 2016, plaintiffs in Current Defamation Action may move to strike her statement of defence. Directions respecting request from Ms Atas to re-open the evidence on the s.140 application. Direction that Ms Atas deliver her materials for proposed recusal motion by July 15, 2016, and for a case conference thereafter in August 2016.
September 6, 2016	Argument on the merits of the motion for interlocutory injunction; decision reserved.
September 13, 2016	Directions to Ms Atas for completing her motion materials respecting her recusal motion.
October 5, 2016	Further directions to Ms Atas for completing her motion materials respecting her recusal motion.
October 6, 2016	Decision on interlocutory injunction in the Current Defamation Proceedings, granting the injunction until trial or further court order: *Dale & Lessman LLP* v. Atas, 2016 ONSC 5911.
October 21, 2016	Direction respecting recusal motion including scope of motion and schedule for responding materials. Responding materials on bias issue due by November 21, 2016. Separate endorsement re settling form of injunction order.
October 31, 2016	Further direction noting unsolicited submissions from Ms Atas, confirming that "my order of October 21, 2016 stands" and directing Ms Atas "not to make further unsolicited submissions on this issue."

December 6, 2016	Directions respecting recusal motion, including scheduling oral argument for February 7, 2017. Reasons for refusing to hear a motion to vary the injunction order of October 6, 2016.
December 14, 2016	Direction repeating prior directions respecting scope of the recusal motion.
February 7, 2017	Recusal motion dismissed as "without any merit". Order granting the s.140 application and declaring Ms Atas vexatious with reasons to follow.
December 31, 2017	These reasons for judgment signed.

Schedule 3 – Contents of this Judgment

CITATION: Peoples Trust Company v. Atas, 2017 ONSC 58
COURT FILE NO.: 14-CV-515899
DATE: 20180103

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

PEOPLES TRUST COMPANY et al.

Applicants

- and -

NADIRE ATAS et al.

Respondents

JUDGMENT

D.L. Corbett J.

Released: January 3, 2018

CITATION: Caplan v. Atas
COURT FILE NO.: CV-16-544153 & CV-18-594948
DATE: 20201120

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: DR. JOSEPH CAPLAN, DEREK LUTH, YAHEL NOV, JONATHAN MICHAEL STANCER, CHARLES ADAM STANCER, RAYMOND STANCER, TOM PIRES and NELLA PIRES, Plaintiffs

AND:

NADIRE ATAS, Defendant

AND:

DALE & LESSMANN LLP, ROBERT E. DALE, DAVIDE. MENDE, CHRISTINA J.
WALLIS, KAGAN SHASTRI LLP, RAHUL SHASTRI, DAVID WINER, STANCER GOSSIN ROSE LLP, RAYMOND STANCER, ERIC GOSSIN, MITCHELL ROSE, GARTH DINGWALL, and RALPH STEINBERG, J. DAVID SLOAN, PEOPLES TRUST COMPANY, DEREK PEDDLESDEN, FRANK RENOU, MARTIN MALLICH and SHARON SMALL, Plaintiffs

AND:

NADIRE ATAS, Defendant

BEFORE: Pollak J.

COUNSEL: *Gary Caplan*, for the Plaintiffs in both actions

Nadire Atas, for the Defendant in-person

HEARD: October 1, 2020

ENDORSEMENT

[1]The Moving Parties request the following:

a. An order suspending the operation of the Endorsement of this Court dated February 4, 2020, pending the determination of the matters set out below or in the alternative a permanent stay of the operation of the said Endorsement;

b. Further, or in the alternative, the advice and direction of the Court as to the meaning, application and relevance of the contents of the said Endorsement as to the trial of the matters of contempt before the Court;

c. An order setting the trial date;

d. An Order that Justice Pollak be recused as the sitting Trial Judge in connection with the trial of the matters of contempt that are before this Court;

e. Such further and other Order as counsel may advise and this Court permit.

[2]The history of the proceedings between the parties on these contempt motions is characterized and summarized by the Moving Parties in paragraphs 8-31 of their factum as follows:

1. Beginning in 2010, Ms. Atas launched a campaign of internet defamation and harassment, first against the Stancer law firm and its members and then later against lawyers, real estate agents, and others who had the misfortune of coming into her orbit. The victims commenced four Actions: the 2010 Stancer Action (Action CV-10-400035); the 2016 Dale & Lessmann Action (CV-16-544153); the 2018 Caplan Action (CV-18-594948) and the 2018 Babcock Action (CV-18-00608448).

2. In his role of case management judge, Justice Corbett issued interlocutory injunction orders in the 2016 Dale and Lessmann action and the 2018 Caplan Action restraining Ms. Atas from further use of the internet (except for limited purposes) and to restrain her from further harassing the parties. There were injunction orders issued in the 2010 Stancer Action as well. Ms. Atas not only breached the Orders but as noted below expanded her attacks to include, among others, the families of the victims.

3. The plaintiffs in the 2016 Dale & Lessmann Action and the 2018 Caplan Action brought motions for contempt when it became apparent to the plaintiffs in those matters that Ms. Atas was violating the orders.

4. With respect to the 2016 Dale & Lessmann Action, the Motion for contempt was brought pursuant to Rule 60.11. Ms. Atas filed an affidavit sworn April 22, 2016 wherein she admitted that she had posted the offending posts (using pseudonyms or aliases) made up to that date. Ms. Atas later brought a *Rowbotham* application which was heard by Justice Pollak in or about October 2017. The application was refused. Justice Pollak was of the view that Ms. Atas had the knowledge to advance a defence and that the factual matters were not complex.

5. The Dale & Lessman Motion was amended in 2018 when it was discovered that Ms. Atas was continuing her campaign of internet defamation and harassment against not only the plaintiffs in that action but also their family members and others. Some sixteen volumes of amended motion materials were filed in connection with the 2016 Dale & Lessmann Amended motion for contempt.

6. The hearing of the Motion for contempt in the 2016 Dale & Lessmann Action was to have been heard for five days beginning August 27, 2018. Lorne Honickman of the Toronto law firm Brauti Thorning LLP was then counsel to the moving parties/plaintiffs, but in time, Mason Caplan Roti LLP assumed carriage of these motions.

7. In similar fashion, the plaintiffs in the 2018 Caplan Action commenced an Action in 2018 for defamation and harassing postings authored by Ms. Atas. They, too, brought a motion by way of Motion Record dated April 20, 2018 and returnable before Justice Corbett on May 1, 2018 for various relief, including for civil and criminal contempt.

8. In that Motion Record, the Caplan plaintiffs not only pleaded civil contempt arising from the breach of the injunction orders that had been issued by Justice Corbett in that Action, but also criminal contempt, the theory being that by attacking directly or indirectly the participants of the civil justice process (the lawyers, their clients and their respective families) Ms. Atas was directly or indirectly attacking the administration of the civil justice system.

9. On or about May 7, 2018 Justice Corbett ordered that the contempt proceedings in the Caplan Action be heard together with the 2016 Dale & Lessmann motion for contempt before Justice Pollak. He ordered that the parties arrange a trial management conference before Justice Pollak in June 2018 or as the court would otherwise direct.

10. The parties appeared before Justice Pollak on June 22, 2018. She ordered that the two proceedings for contempt would proceed by way of motion under Rule 60.11 (paragraph 3). The Order gave the Moving Parties a deadline to file all affidavit materials and expert reports. Justice Pollak adjourned the five day hearing that had been set for August 27, 2018 and in particular ordered that those days were to be used for Case Management and scheduling purposes. Paragraph 10 of the Order required that the parties deliver agendas and timetables for Opening and Closing Statements and the cross examination of witnesses.

11. The parties appeared again before Justice Pollak on August 27, 2018. Justice Pollak adjourned the Case Conference to November 5, 2018 because Ms. Atas had proposed to bring a motion to have the contempt proceedings dismissed. The Order set out a timetable by which the motion to dismiss the contempt proceedings was to be heard. In the end, the Motion to dismiss was not pursued.

12. The parties appeared before Justice Pollak on November 5, 2018. Without any prior warning, and without requiring that submissions be made in advance, Justice Pollak, of her own motion, appointed the law firm of Stockwoods LLP to act as *amicus curiae*.

The reason for the appointment of *amicus* as explained by Justice Pollak, was to assist the court in determining the proper test as to distinguish a civil contempt and a criminal contempt. The Court also wanted assistance to determine whether the *Crown Attorneys Act* applied and whether the office of the Attorney General should be notified of the proceedings. Justice Pollak also granted leave to the Caplan plaintiffs to file a five volume Restated and Further Motion Record dated October 30 2018 and she set December 12, 2018 as the return date.

13. Meanwhile on November 7, 2018 the plaintiffs in the Babcock Action commenced their Action against Ms. Atas, also for internet defamation and harassment. No injunction relief was sought in that Action.

14. On December 12, 2018 the parties in the contempt motions appeared again before Justice Pollak. On this occasion, Justice Pollak fixed February 12, 2019 as the date to hear submissions to determine the proper test to distinguish civil and criminal contempt and to determine whether the office of the Attorney General should be notified of the contempt proceedings. By this time, Stockwoods LLP had advised the Court, counsel, and Ms. Atas that it had discovered that it had a conflict of interest in acting as Court appointed *amicus*. Justice Pollak then appointed the law firm of Fenton Smith LLP in its stead.

15. On February 12, 2019 some of the matters first raised in the November 5, 2018 appearance were addressed by the parties and *amicus*. Justice Pollak ordered *amicus* to put the office of the Attorney General on notice of the contempt proceedings and required the delivery to the office of the Attorney General of certain pleadings and documents. She also ordered that on July 9, 2019 the parties reappear before her.

16. Justice Pollak advised the parties that she was unable to attend the July 9, 2019 date and she adjourned the matter to September 11, 2019.

17. The parties, the Crown and *amicus* appeared before Justice Pollak on September 11, 2019. At that time the Court ordered:

18. that the motions for contempt would proceed by way of *viva voce* trial and not by way of motion;
19. the trial would proceed to address the issues set out in the Order;
20. the trial would proceed first with a factual inquiry on liability alone, with sentencing or penalty to be dealt with later and that the Office of the Attorney General would be involved in the process after a finding of liability if found; and
21. that the parties appear before Justice Pollak on November 4, 2019 to deal with the time management of the trial and related issues.
22. There appears to have been no formal Order issued regarding the September 11, 2019 appearance but the contents of the courts Endorsement for that date was reproduced in a November 4, 2019 Endorsement.

23. In the meantime, the plaintiffs in the four Actions had served notices of motion for summary judgment seeking among other things: (i) a finding that Ms. Atas was the author and maker of the postings; (ii) a permanent injunction; and (iii) an order that she be compelled to remove the offending postings. In support of the motions, Ms. Atas was served with 6 further affidavits in connection with both the contempt proceedings before Justice Pollak and the defamation proceedings before Justice Corbett. These affidavits included the affidavits of the Babcock plaintiffs, an affidavit of a US lawyer retained to obtain metadata from US based web platforms such as Facebook and Pinterest, and an affidavit of an investigator and internet expert. These affidavits included the following:

24. Supplementary Affidavit of Guy Babcock sworn January 25, 2019;
25. Supplementary Affidavit of Luc Groleau sworn March 7, 2019;
26. Affidavit of Michael Jason Lee sworn June 6, 2019;
27. Affidavit of Tom Warren sworn June 20 2019; and
28. Second Supplementary Affidavit of Luc Groleau sworn November 5, 2019.
29. To make it clear, the affidavit evidence filed in connection with the four Motions for Summary and default Judgment before Justice Corbett and the contempt motions before Justice Pollak is the same. Before both courts were and are: (i) the 16 volumes filed in the 2016 Dale & Lessmann Contempt Amended Motion Record; (ii) the five-volume Restated Motion for Contempt in the Caplan Action; and (iii) the affidavits referred to in paragraph 25.

30. The parties appeared before Justice Pollak on November 4, 2019. The lawyers for the moving parties, as ordered, had filed a Factum setting out what counsel was expecting to address at the November 4, 2019 attendance. Rather than deal with those issues, on November 4, 2019, Justice Pollak, of her own motion and not at the instance of any motion brought by Ms. Atas, ordered by Endorsement issued on December 23, 2019 that Ms. Atas be provided with particulars specifying the paragraph of each Order issued by Justice Corbett which was alleged to have been breached, and the particulars of the posts that constituted the breach. The basis of this ruling was that this court has been attempting to determine the procedure to be followed in advance of the hearing of the actual evidence so that the defendant Ms. Atas has proper notice of the procedure that will be followed and so that the court can efficiently schedule available hearing times for the hearing of these two motions (at paragraph [7]).

31. Counsel objected to that order on the grounds that Justice Pollak was now appearing to case manage the evidence to be introduced in the trial. However rather than appeal the contents of this pre-trial endorsement, counsel complied and delivered the Particulars as ordered.

32. Meanwhile, on November 15 and December 6, 2019, Justice Corbett heard all four motions for Summary and default Judgment in each of the four Actions and a decision is expected by the end of September 2020. Importantly, Ms. Atas filed no responding materials to these motions and conducted no cross examinations. In each motion, the victims sought, among other things, (i) a finding that Ms. Atas is the author and maker behind the aliases and pseudonyms of the on-line statements; (ii) an order for

permanent injunctions; and (iii) an Order, by way of mandamus, that she take down all of the postings. Again, should the plaintiffs prevail in those motions, it will be a finding of the Superior Court on the balance of probabilities (the civil standard of proof) that Ms. Atas is the poster. To repeat, the affidavit evidence before Justice Corbett, is identical to the affidavit evidence that is before Justice Pollak on the contempt motions.

33. Notwithstanding the delivery of the Particulars as ordered, and instead of providing the parties with a trial date, Justice Pollak, again, on no motion brought by any party, issued a further Endorsement dated February 4, 2020. In this Endorsement Justice Pollak required that the Moving parties in both the Caplan and Dale & Lessmann contempt proceedings set out the volume, tab number, and page number where the hundreds of posts set out in the Particulars are to be found in the Caplan Restated Motion Record referred to above. There was no explanation or reasons why the Particulars as delivered were wanting.

[3]The Moving Parties first submission is that this motion ought to have been heard by another judge on the recusal aspect. I do not agree. This court is in a much better position to understand and consider all of the issues raised in this motion. Further, for the reasons set out below, as I do not find that I should recuse myself, it is fair, efficient and proper that I hear this motion.

[4]Their main submission is that a trial judge may not intervene in a way that appears to destroy the appearance of fairness. Litigants have the right to submit their case. The trial judge does not have the right to usurp the function of counsel. It is submitted that the perceived effect of the two Endorsements by this court, and the earlier bench originated rulings for the appointment of amicus and for the intervention of the Attorney General to assume carriage and control of the process give rise to that appearance.

[5]It is therefore submitted that it is fair and just that I not conduct the trial. The Moving Parties submit that I have directed them on how to organize their evidence before the trial, where such direction is not relevant to the needs of Ms. Atas resulting in an objective apprehension of bias in favor of Ms. Atas.

[6]It is argued that, by my own motion, I have issued two endorsements which effectively ordered the moving parties to reorganize, reformat, and cross reference some of the affidavit evidence filed. The Moving Parties submit that the February endorsement is incapable of compliance and serves no purpose. The moving parties seek an order setting aside the two Endorsements referred to above and, in the alternative, directions with respect to those orders.

[7] The moving parties argue that as this court has through its two Endorsements directed them on how to present their evidence before trial, there is an appearance of bias. The moving parties therefore request that I recuse myself as the trial judge.

[8]The Moving Parties advise that there are 9,000 posts that are on the internet after the injunction order of Justice Corbett and that Ms. Atas continues to post.

[9]Further, the Moving Parties now advise that the evidence before me is identical to the evidence that was before Justice Corbett on motions for summary judgment. The materials referred to before Justice Corbett, were not filed in these proceedings. In particular, there is a draft order before Justice Corbett that contains a reference to thousands of posts, which Ms. Atas is responsible for.

[10]The reasons for the courts December order were:

> Counsel for the moving parties advised the court that he is concerned that as the judge hearing the contempt motions, I do not have jurisdiction to make procedural rulings with respect to the procedure to be followed in the adjudication of these contempt motions and submits that the trial of the contempt issues has not yet commenced. The moving parties have, in the numerous proceedings set by this court, to attempt to resolve necessary procedural orders for the hearing of evidence, been taking the position that all of the hearings before the court have been by way of management conferences.
>
> I find that as the judge hearing the contempt motions, I have the responsibility to ensure that the hearings proceed fairly and in an organized and expeditious fashion. This does require, in my view, that the procedural issues that I have repeatedly raised in previous hearings with the parties be dealt with before any evidence is heard.
>
> Counsel further advised that this hearing is premature as all of the evidence has not yet been filed.
>
> I have advised the moving parties in previous proceedings that as the judge seized with the hearing of these two contempt proceedings, I have jurisdiction and a responsibility to determine the proper procedure to be followed with respect to the hearing of these motions. In particular, our jurisprudence has clearly held that the form of hearing is largely left to the discretion of the presiding judge and further that, the process must be fair. As a result of a previous Order of this court that the two above noted contempt proceedings be heard together, this court has been attempting to determine the procedure to be followed in advance of the hearing of the actual evidence so that the defendant Ms. Atas has proper notice of the procedure that will be followed and so that the court can efficiently schedule available hearing times for the hearing of these two motions. Our Court of Appeal has held in *College of Optometrists (Ontario v. SHS Optical Ltd.,* 2008 ONCA 685, 93 O.R. (3d) 139, that the form of hearings is left largely to the discretion of the presiding judge.
>
> In order to make the required procedural rulings on the previous submissions made by the moving parties, so that the trial of the issue of the contempt may be heard, the court must establish a deadline for the filing of further evidence by the moving parties. Counsel for the moving parties has advised the court that the number of victims has now gone to over 150, and that the posts are over 3000. I will have all the URLs and the domains and the names of the victimsper domain sent to your office by the end of the week. This information has not been filed. To ensure that a

proper fair hearing proceeds, Ms. Atas must have sufficient particulars of the alleged contempt.

The moving parties have advised the court that all of the evidence has not yet been filed but that no new evidence will be filed after November 15, 2019. There has been no further evidence filed by the moving parties from this hearing of November 4, 2019 to November 15, 2019. To ensure clarity, this court therefore orders that no new evidence will be filed after November 15, 2019.

On these two motions, there is great deal of voluminous materials and multiple orders that have been alleged to been breached. There are in excess of 6000 pages of documents contained in the notices of motions.

Our Court of Appeal has held that a contempt notice of motion is not effective if required particulars cannot be determined from one paragraph in a supporting affidavit (*Follows v. Follows,* 1998 Can LII 4629 (ON CA).

Without providing an extensive review of the voluminous materials in this case, the court finds that it is very difficult to determine which affidavits and exhibits are being relied upon for which contempt allegation and which order is being breached.

Applying the guidance of our Court of Appeal, it is my view that fairness in this case requires that Ms. Atas should be aware of the allegations made against her and be permitted, if she chooses to do so, make submissions on these issues. Ms. Atas is entitled to particulars of the case she has to meet so that she may, if she wishes to do so, prepare her own evidence and evidentiary submissions.

This is not a simple case as there are allegations of both civil and criminal contempt. The moving parties must prove the following to establish civil contempt:

The Order allegedly breached clearly and unequivocally stated what should or should not be done;

The party alleged to have breached the Order must have actual knowledge of the Order; and

The party allegedly in breach must have intentionally done the act prohibited or mandated by the order.

To prove their allegations of criminal contempt, the moving parties must, in addition to proving the above three elements, establish that Ms. Atas has been defiant of the court orders in a public way with the intent, knowledge or recklessness as to the fact that public disobedience will tend to depreciate the authority of the court.

> **This court finds that as a result of the voluminous materials and the number of Orders that have been alleged to be breached with the large number of alleged breaches, an order that the moving parties provide Ms. Atas with the following particulars, is required:**
>
> For each Order alleged to have been breached:
>
> specific paragraph(s) or passages in the Orders alleged to be breached.
>
> Each action or inaction that the Plaintiffs will seek to prove amounts to a contempt of Ms. Atas, relied on to establish the breach, including, the date and time of each post, the website posted to, the content of the post and the volume and tab numbers and page numbers of the documents relied on in support of each breach.
>
> These particulars must be served and filed (in the motions office) by 12 p.m. on March 10, 2020.
>
> **I find that I cannot rule on the procedural issues I have been attempting to adjudicate, until all of the evidence and the particulars I have ordered have been produced by the moving party (up to November 15, 2019).**

[11]The Moving Parties emphasize that these particulars are ordered before the trial. This evidence technically has not been introduced yet. It has been provided to the court, and Ms. Atas by way of disclosure, subject to the limited information in these proceedings. Ms. Atas does not argue saying that she does not understand the allegations, as she argued this evidence in front of Justice Corbett last November. It is alleged that, through this February order, this court is demanding that the Moving Parties explain their evidence.

[12]At this hearing, counsel offered and has now provided this court with the draft orders that are before Justice Corbett. Attached as schedule A to those orders are thousands of posts that set out the URL. The court did not have access to those draft orders previously, but Ms. Atas did.

[13]Further, the court was not aware that Ms. Atas has had access to that information.

[14]In order to properly schedule a trial, this court must properly assess required trial time. The Moving Parties allege that I was biased, by telling them how to reorganize evidence. They submit that they have complied with the December order because all the information is there in Tab 6, schedule 1, in the book of particulars, which includes a schedule that lists all the offending posts that were created by Ms. Atas as of January 3, 2020. It consists of 260 pages of almost single lined URLs and websites of posts. Its organized by victim. <u>It is organized by date where the dates can be determined.</u>

[15]The Moving Parties argue that the Endorsements, impose upon the Moving Parties a pre-trial order, not sought by the party opposite, nor mandated by the application of the Principles, to tailor make the evidence in a manner to the liking of the bench.

[16]As they originated from the bench and were not requested by any motion, it is improper to compel the moving parties, before trial, to reorganize, reformat, and cross reference some of the

9000 pages of affidavit evidence before the court without any prior and foundational finding that Ms. Atas does not understand the case she has to meet. I do not agree or accept this submission. The reasons for the orders are set out above.

[17]The Moving Parties submit that neither party was afforded any notice requirements for the two Endorsements. In the absence of a record, and in the absence of notice, and in absence of any juridical finding engaging the application of the legal Principles, it is fair and just that the Endorsements be set aside and the case proceed to trial.

[18]Ms. Atas submits that the orders were required to ensure proper disclosure. Ms. Atas has been submitting for some time that she should not be required to sift through tens of thousands of pages to locate the allegations of contempt.

[19]She relies on the Divisional Court in *Rocca Dickson Andreis Inc. v. Umberto Andreis,* 2013 ONSC 5508 (CanLII) paras. 7 and 24, that she should not be required to painstaking search through tens of thousands of pages of documents to discern the specific allegations of contempt. The onus is on the party seeking a finding of contempt and penal consequences to clearly spell out the particulars. The Courts stated:

> [7] It is evident from paragraphs 12 through 15 of the reasons of the motions judge that the particulars of the alleged contempt are also not clearly set out in the supporting affidavit and its exhibits. At paragraph 42 of his reasons, the motions judge found that to a more familiar reader (that is to say one of the parties) the materials may be much easier to navigate However, that begs the question as to whether someone who is alleged to have committed contempt should have to be making this type of painstaking search through pages and pages of documents to discern the specific allegations of contempt they face.
>
> [24] In this case, unlike *Geremia*, there is no reference in the motion judges reasons to the correlation between a civil motion for contempt and criminal law proceedings. The strictissimi juris principles, tracing procedural requirements to the possibility of penal consequences including incarceration, are the measuring stick for fair notice and reasonable particulars. It is not up to the alleged contemnor to demonstrate a complete lack of fair notice. <u>The onus is on the party seeking a finding of contempt and penal consequences to clearly spell out the particulars, to direct and focus both the responding party and the court on precisely what act or omission constitutes contempt.</u>

[20]Further, she relies on the Court of Appeal decision in *Bell ExpressVu Limited Partnership v. Corkery*, 2009 ONCA 85 (CanLII) at para 20, where the court affirmed that contempt of court is a serious matter and quasi-criminal in nature.

> [20] A finding of contempt of court is a serious matter that is quasi-criminal in nature. It is "first and foremost a declaration that a party has acted in defiance of a court order": *Pro Swing Inc. v. Elta Golf Inc*., 2006 SCC 52 (CanLII), [2006] 2 S.C.R. 612, [2006] S.C.J. No. 52, at para. 35. The potential penal sanctions facing a contemnor underscore the seriousness of such a finding. As the Supreme Court of Canada has observed, "[t]he penalty for contempt of court, even when it is used to enforce a purely private order, still

> involves an element of 'public law', in a sense, because respect for the role and authority of the courts, one of the foundations of the rule of law, is always at issue": Pro Swing, at para. 34, citing *Vidéotron Ltée v. Industries Microlec Produits Électroniques Inc*., 1992 CanLII 29 (SCC), [1992] 2 S.C.R. 1065, [1992] S.C.J. No. 79, at p. 1075 S.C.R. This court has recently reaffirmed these principles in *Chiang (Trustee of) v. Chiang* (2009), 93 O.R. (3d) 483, [2009] O.J. No. 41, 2009 ONCA 3, at paras. 10-11. [page621] It is for these reasons that motions for contempt are often said to be strictissimi juris, i.e., that all proper procedures must be strictly complied with: see *Dare Foods (Biscuit Divisions) Ltd. v. Gill*, 1972 CanLII 506 (ON SC), [1973] 1 O.R. 637, [1973] O.J. No. 21 (H.C.J.); *Toronto Transit Commission v. Ryan* (1998), 1998 CanLII 14635 (ON SC), 37 O.R. (3d) 266, [1998] O.J. No. 51 (Gen. Div.).

[21]As well, she relies on the case of *Oesterlund v Pursglove*, 2015 ONSC 6145*,* at para 6, where it held, motions for contempt are often said to be strictissimi juris,

> [6] While both motions ask the Court to impose sanctions on the Applicant for his alleged noncompliance as set out therein, the conduct and procedure of the motions is decidedly different. The Motion to Strike is a civil motion wherein the standard of proof to establish a breach of a Court Order warranting sanction is one of a balance of probabilities. The Contempt Motion is a quasi-criminal motion wherein the Applicant faces potential incarceration. It is well settled law that establishing civil contempt requires proof beyond a reasonable doubt of an intentional act or omission that is in fact in breach of a clear order of which the alleged contemnor has notice (*Carey v. Laiken*, 2015 SCC 17, 2015 CarswellOnt 5237 (S.C.C.) at para. 38). It is for these reasons that motions for contempt are often said to be strictissimi juris, ie. that all proper procedures must be strictly complied with (*Bell Express Vu Ltd. Partnership v. Torroni*, 2009 ONCA 85, 2009 CarswellOnt 416 (Ont. C.A.) at para. 20).

[22]Ms. Atas submits she is entitled to be given fair notice and reasonable particulars. She cannot sift through approximately 30,000 pages. She attempted to bring a motion to dismiss the contempt motions. The motion was not heard as this court ruled that she could make these submissions in response to the motions for contempt.

[23]Ms. Atas submitted that she could not file responding material in the four Motions for Summary and default Judgment heard November and December 2019 before Justice Corbett without self-incrimination. She did not want to waive her right against self-incrimination and a waiver of her right not to be compelled to testify at the hearing of the Contempt Motions.

[24]I do not accept that my Orders are asking the Moving Parties to re-scramble their evidence. That is not the intent of the Court, which is set out in the reasons I have referred to above, namely for disclosure and proper trial management, to ensure the trial will proceed fairly and efficiently. The Moving Parties are free to present their evidence (subject to procedural rulings) as they wish. It is the obligation of this court as a gatekeeper to ensure that proper disclosure is given to Ms. Atas in accordance with the principles set out by our Court of Appeal and to properly manage the scheduling of the trial.

[25]The endorsements were, in my view, required as Ms. Atas did not have disclosure of the allegations against her.

[26]The Moving Parties ask to set aside these two orders as they are an unwarranted interference in counsels right to present the case as the moving parties deem fit and they are irrelevant to the issues that are before you in the contempt motions.

[27]The court now has the information set out in the materials before Justice Corbett, which were given to Ms. Atas and now to this court.

[28]The court has set out the relevance or purpose of the orders and can now give directions that, subject to any further orders of this court, no further action is required by the Moving Parties with respect to these orders.

[29]With respect to the request that I recuse myself, Ms. Atas relies on the decision in *The Regional Municipality of Peel Police Services Board v. John*, 2020 ONSC 1052 (CanLII), wherein Justice Daley set out the principals applicable to the determination of a recusal motion.

> The principles applicable to the determination of a recusal motion based on alleged bias or the reasonable apprehension of bias have been clearly stated in several cases, including the Supreme Court of Canada decision in *R. v. S. (R. D.),* 1997 CanLII 324 (SCC), [1997] 3 S.C.R. 484.
>
> [10] As to what constitutes bias, the Court in S. (R. D.) held at para. 105:
>
> In contrast, bias denotes a state of mind that is in some way predisposed to a particular result, or that is closed with regard to particular issues. A helpful explanation of this concept was provided by Scalia J. in *Liteky v. U.S.*, 114 S.Ct. 1147 (1994), at p. 1155:
>
> The words [bias or prejudice] connote a favorable or unfavorable disposition or opinion that is somehow wrongful or inappropriate, either because it is undeserved, or because it rests upon knowledge that the subject ought not to possess (for example, a criminal juror who has been biased or prejudiced by receipt of inadmissible evidence concerning the defendants prior criminal activities), or because it is excessive in degree (for example, a criminal juror who is so inflamed by properly admitted evidence of a defendants prior criminal activities that he will vote guilty regardless of the facts). [Emphasis in original.]
>
> Scalia J. was careful to stress that not every favourable or unfavourable disposition attracts the label of bias or prejudice. For example, it cannot be said that those who condemn Hitler are biased or prejudiced. This unfavourable disposition is objectively justifiable -- in other words, it is not wrongful or inappropriate: *Liteky*, supra, at p. 1155.
>
> [11] Impartiality was described by Cory J. in *S. (R. D.)* at para. 104 as:
>
> . impartiality can be described perhaps somewhat inexactly as a state of mind in which the adjudicator is disinterested in the outcome and is open to persuasion by the evidence and submissions.

> [12] There is a high threshold on a motion for recusal as such a motion calls into question an element of judicial integrity. Such an allegation of bias or reasonable apprehension of bias not only calls into question the personal integrity of the judge, but the integrity of the entire administration of justice: *S. (R. D.),* at para. 113.
>
> [13] In light of the presumption of judicial impartiality, the onus of demonstrating bias lies with the party who alleges its existence and bias must be proved on a balance of probabilities: *R. v. Nero*, 2016 ONCA 160, at paras. 30-32.
>
> [14] As was stated by Doherty J.A. in *Beard Winter v. Shekdor*, 2016 ONCA 493, at para. 10:
>
> .. judges do the administration of justice a disservice by simply yielding to entirely unreasonable and unsubstantiated recusal demands. Litigants are not entitled to pick their judge. They are not entitled to effectively eliminate judges randomly assigned to their case by raising specious partiality claims against those judges. To step aside in the face of a specious bias claim is to give credence to a most objectionable tactic.
>
> [15] As to the respondents recusal motion, there is no evidence whatsoever which, evaluated through the eyes of the reasonable, informed, practical and realistic person, would support the respondents allegation of the presence of an actual bias or the reasonable apprehension of bias: *S. (R. D.),* at paras. 36-37.
>
> [16] The respondents evidence and his submissions simply amount to his disagreement with determinations made by me in previous cases in the absence of any cogent evidence that could form the basis of a claim of bias or for the reasonable apprehension of bias.

[30]This court made the orders for particulars to fulfill its gatekeeping function in order to ensure that proper disclosure was provided to Ms. Atas. As part of its gatekeeping function it is also the responsibility of the court to properly manage the proceeding so that the trial can be conducted efficiently within the scheduled time. Ms. Atas is entitled to proper disclosure before the evidence is introduced. Otherwise it is reasonable to foresee that adjournments will be required. It is standard practice for pre-trial management to be conducted to ensure that there are no surprises at trial which can easily derail the trial. These motions involve serious allegations of both criminal and civil contempt.

[31]I do not find that in this case there is an appearance of bias in favour of Ms. Atas and that I should recuse myself as a result. For scheduling reasons however, and, in particular, as a result of the COVID pandemic, it will not be possible for me to serve as the trial judge. I will conduct the necessary pretrial management. As soon as the court is able to determine how much trial time is required and the court is able to assign a trial date, it will do so.

[32]In the meantime, my office will arrange a trial management date with the parties wherein the procedural issues necessary to proceed with the trial will be determined.

[33]In summary, subject to any further court orders, having regard to the information provided to the court in the draft orders before Justice Corbett, I direct that at this time no further action is required by the Moving Parties with respect to the December and February orders for particulars. I

will not be the trial judge and I will arrange and conduct the necessary pre-trial management for the scheduling of this trial.

Pollak J.

Date: November 20, 2020

Gmail

Nadire Atas <nadireatas24@gmail.com>

Fwd: RE: Caplan v. Atas

Paul Slansky <paul.slansky@bell.net> Mon, May 16, 2022 at 11:47 PM
To: nadireatas24@gmail.com

fyi

------ Original Message ------
From: GCaplan@mcr.law
To: Patricia.Lyon-McIndoo@ontario.ca; paul.slansky@bell.net
Cc: cwallis@wallis-law.com; matthewgcameron@gmail.com; luc.groleau@gmail.com; ACenerini@mcr.law
Sent: Friday, August 6, 2021 7:23 AM
Subject: RE: Caplan v. Atas

Ms. Lyon-McIndoo

Would you kindly direct the following communication to Justice Corbett

Your Honor

I thank you for your Case Management Endorsement dated August 5 2021 which is attached for ease of reference.

I also attach the issued and entered Consolidated Judgment dated January 28, 2021 which was issued on April 22 2021. Finally I attach the Motion Record that was before you for the relief which is now reflected in your August 5 2021 Judgment.

I am somewhat confused by the following pronouncements made in the Endorsement pf August 5 2021. I ask for clarification so that I can redraft the formal Order as directed.

In paragraph 13 of the Endorsement, suggests that the motion before you did NOT ask that there be a finding that Ms. Atas was the maker of the postings made between November 2019 and January 28 2021 and pre November 2019 postings that were unknown by the plaintiffs in November 2019. Paragraph 13 reads:

Mindful of this issue, the court directed that the motion not seek a finding that Atas is the author of the impugned publications. No such finding is sought and none shall be granted in this decision.

In paragraph 14 of the Endorsement, the following is stated:

With respect, this argument lacks coherence. The issue of authorship is expressly not before this court, Atas has no need to respond to that issue, and so there can be no basis for anyone to say that the issue has been decided – either expressly or by implication.

In addition, Paragraph 23 refers to a finding of the court that suggests that no finding of authorship has been made.

Respectfully, your January 28 2021 Judgment did make an EXPRESS finding that Ms. Atas was the maker and publisher of the postings that were the subject matter of the Motions for Summary and Default Judgment.

The plaintiff motion before you was to expand the Judgment to include pre-November 2019 postings and postings made between November 2019 and January 28 2021. (The evidence placed before the Court made it clear that the pre-November 2019 postings were unknown to the plaintiffs at the time that the Motions were heard.)

The motion before this Court made the express request that there be a finding, as there had been in connection with the Judgment of January 28 2021, that Ms. Atas is the maker and publisher of pre November 2019 postings and those made between November 2019 and January 28 2021.

To enforce the Judgment of January 28, 2021, the plaintiffs were granted a direct property interest in the metadata. The factual basis of that relief was that Ms. Atas was the maker and publisher of the postings. The same relief is sought for the pre-November 2019 postings and the November 2019-January 28 2021 postings.

Respectfully, I ask that this court clarify and perhaps correct the Endorsement to reflect : a) Ms. Atas is the maker and publisher of the postings referred to above and b) the relief granted in the January 28 2021 Judgment apply to those postings as well.

Gary M. Caplan C.S (Civ. Lit.) LL.M, C.Med, C.Arb

Partner

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WE'RE MOVING! As of September 1st, 2021 our office will be located at 123 Front Street W, Suite 1204, Toronto, ON, M5J 2M2.

Please ensure that all correspondence is forwarded to our new address.

From: Gary Caplan
Sent: Friday, August 06, 2021 6:12 AM
To: 'Lyon-McIndoo, Patricia (JUD)' <Patricia.Lyon-McIndoo@ontario.ca> paul.slansky@bell.net; Annessa Cenerini <ACenerini@mcr.law> Clement, Patrick (MAG) <Patrick.Clement@ontario.ca> Jennifer Robichaud <jrobichaud@mcr.law> 'Christina Wallis' <cwallis@wallis-law.com> Luc Groleau <luc.groleau@gmail.com>
Cc: 'Matt Cameron' <matthewgcameron@gmail.com> 'Raymond Stancer' <rstancer@roseandrose.ca> 'Rahul Shastri j3' <rshastri@ksllp.ca>
Subject: RE: Caplan v. Atas

Acknowledged with thanks.

From: Lyon-McIndoo, Patricia (JUD) <Patricia.Lyon-McIndoo@ontario.ca>
Sent: Thursday, August 05, 2021 12:10 PM
To: Gary Caplan <GCaplan@mcr.law> paul.slansky@bell.net; Annessa Cenerini <ACenerini@mcr.law> Clement, Patrick (MAG) <Patrick.Clement@ontario.ca> Jennifer Robichaud <jrobichaud@mcr.law> 'Christina Wallis' <cwallis@wallis-law.com> Luc Groleau <luc.groleau@gmail.com>

rlongpre@torkinmanes.com
Subject: Caplan v. Atas

Counsel:

Please find attached the Endorsement of the Honourable Mr. Justice Corbett.

Kindly acknowledge receipt by return email.

Thank you.

Pat Lyon-McIndoo

Secretary to

The Honourable Mr. Justice Corbett

---

3 attachments

Motion Record.pdf
1291K

Issued and Entered Order.pdf
8829K

Supplementary Judgment dated August 5 2021.pdf
153K

CITATION: Caplan v. Atas, 2021 ONSC 5390
COURT FILE NOS.: CV-10-400035, CV-16-544153, CV-18-594948, CV-18-608448
DATE: 20210805

ONTARIO

SUPERIOR COURT OF JUSTICE

COURT FILE NO.: CV-10-400035

B E T W E E N:	)	
	)	
STANCER GOSSIN ROSE LLP	)	*Gary Michael Caplan and Rebecca Longpré* for the Plaintiffs
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
NADIRE ATAS and JANE DOE	)	*Nadire Atas* self-represented
	)	
Defendant	)	

COURT FILE NO.: CV-16-544153

B E T W E E N:	)	
	)	
DALE & LESSMAN LLP, ROBERT E. DALE, DAVID E. MENDE, CHRISTINA J. WALLIS, KAGAN SHASTRI LLP, RAHUL SHASTRI, DAVID WINER, STANCER GOSSIN ROSE LLP, RAYMOND STANCER, ERIC GOSSIN, MITCHELL ROSE, GARTH DINGWALL, and RALPH STEINBERG, J. DAVID SLOAN, PEOPLES TRUST COMPANY, DEREK PEDDLESDEN, FRANK RENOU, MARTIN MALLACH and SHARON SMALL	)	*Gary Michael Caplan and Rebecca Longpré* for the Plaintiffs
	)	
Plaintiffs	)	
	)	
- and -	)	
	)	
NADIRE ATAS	)	*Nadire Atas* self-represented
	)	
Defendant	)	

COURT FILE NO.: CV-18-594948

B E T W E E N:	)	
	)	
DR JOSEPH CAPLAN, DEREK LUTH, YAHEL NOV, JONATHAN MICHAEL STANCER, CHARLES ADAM STANCER, RAYMOND STANCER, TOM PIRES and NELLA PIRES	)	*Gary Michael Caplan and Rebecca Longpré* for the Plaintiffs
Plaintiffs	)	
- and -	)	
NADIRE ATAS	)	*Nadire Atas* self-represented
Defendant	)	

COURT FILE NO.: CV-18-608448

B E T W E E N:	)	
	)	
GUY BABCOCK, LUC GROLEAU, JULIA GROLEAU, MARC GROLEAU, SHU GUANG SHEN, REBECCA HAUFE, ANDREW HAUFE, KATHERINE BRNJAC, TOM BABCOCK, RAMONA HELM, JOHN BABCOCK, MILA BAIER, SHAWN MURRAY AND AGNIESZKA MURRAY, PRESTON SCHMIDT, BRANDON SCHMIDT, RALPH SCHMIDT, SARA BASARA, JOHN BAIER, TONY LOCANE, ALEXANDRA BORONDY, ALFONSO COSENTINO and STEVE PROC[1]	)	*Gary Michael Caplan and Rebecca Longpré* for the Plaintiffs
Plaintiffs	)	
- and -	)	
NADIRE ATAS	)	*Nadire Atas* self-represented
Defendant	)	**ALL HEARD:** at Toronto April 16, 2021

CASE MANAGEMENT ENDORSEMENT

D.L. Corbett J.:

[1] This decision follows a judgment dated January 28, 2021 (2021 ONSC 670) and further endorsements from this court dated April 16, 2021 and April 23, 2021 (2021 ONSC 3085). The judgment was limited to defamatory publications known to the plaintiffs as of the time that the motions for judgment were argued before me (November 2019). In the wake of the decision, the plaintiffs provided the court with evidence of further publications allegedly coming to their attention and/or published after completion of argument in November 2019. The plaintiffs sought to have the formal judgment reflecting my decision dated January 28, 2021 include publications that were not in evidence at the time of the motions for summary judgment.

[2] I declined to proceed in this fashion. I concluded that relief in respect to additional publications should be addressed on motion pursuant to the judgment, to accord Atas an opportunity to respond to the further allegations. The plaintiffs served this motion on Atas. By May 28, 2021, Atas had not responded to the motion. In my endorsement dated May 28, 2021, I directed that Atas would have until June 11, 2021 to provide any responding materials.

[3] Atas did not provide responding materials by the deadline. However, her criminal counsel, Mr Slansky, contacted the court on June 25, 2021, with the following message to which was attached a document from Ms Atas:

> I just received this indirectly from Ms. Atas. It appears to be directed to me on June 11. However, I did not receive it until today at 6:20 pm.
>
> I do not know what this is about. However, Ms. Atas has asked me to forward it to you so that it can be provided to Justice Corbett.

It is not clear why Ms Atas would feel it necessary to send her materials to the court through the good offices of her criminal defence counsel, since she apparently transmitted the materials to her counsel by email. Be all of that as it may be, the court has received Atas' submissions and will treat them as her response to the plaintiffs' motion.

Overview

[4] The plaintiffs have presented evidence of ongoing harassment and defamation of them, and others, from the time the motions for summary judgment were heard to and after the date this court delivered judgment on January 28, 2021.

[5] Atas has not contested the central allegations in her response to the motion. She has not contested that the impugned publications were published on the internet. She has not contested that they are "of and about" the plaintiffs and other persons protected by the Judgment. She has not contested that the publications are defamatory and constitute internet harassment (as that term is used in the Judgment). She has not raised any argument as to why the plaintiffs and other

persons protected by the Judgment should not be entitled to have these publications removed from the internet.

[6] As I explained in my prior endorsements referenced above in paragraph 1, the plaintiffs and others protected by the Judgment should not be required to engage in a years-long process to seek redress in respect to these publications. They have the benefit of the Judgment, and the publications they now seek to suppress are clearly an extension of the campaign of harassment and defamation that gave rise to the Judgment.

[7] In the Judgment I lamented the result of our legal process in the context of this case, which has seen Atas engage in a years-long campaign of malicious harassment using the internet. No reasonable person could possibly justify the conduct at issue here, as described fully in the Judgment, and as further illustrated in the mass of publications that are the subject-matter of the current motion.

[8] Atas did, however, make arguments opposing the plaintiffs' motion. I shall deal with each briefly in the order in which they are presented in her submission.

1. The Court is *functus officio*

[9] Atas is correct that this court is *functus officio* respecting the claims decided in the Judgment. Those issues have been finally decided and this court will not reconsider them now. This court is not *functus officio* respecting enforcement of the Judgment.

[10] This point has been made to Atas before. I make it again in the current context. Atas was subject to interlocutory and interim injunctions up to the time of Judgment. Those orders were replaced with permanent injunctions. The court made ancillary orders in connection with the injunctive relief to enable persons entitled to the benefit of the orders to obtain relief if it appeared that the injunctions had been breached.

[11] The doctrine of *functus officio* does not operate personally. It is not a disability on the part of an individual judge. Rather, it is a disability in respect to the entire court: once the case has been decided and formal judgment has been rendered, the case is over. The court – writ large – may not re-enter into the dispute to adjudicate it anew. The court may, however, enforce court orders. And that is what is happening now. The Ontario Superior Court of Justice is not precluded by the doctrine of *functus officio* from deciding this motion, which is grounded in enforcement of the Judgment. I, as the trial judge, am under no greater disability enforcing the Judgment than is any other judge of this court.

2. Supplementary Judgment Not Available in Law after Judgment is Issued and Entered

[12] This argument is an alternate way of expressing the doctrine of *functus officio*. I explain why this argument does not succeed in the prior section of this endorsement.

3. Atas Has the Right to Remain Silent

[13] Atas is facing criminal prosecution for her conduct towards the moving parties. She does have a right to remain silent and, in particular, the right not to be compelled to self-incriminate. Mindful of this issue, the court directed that the motion not seek a finding that Atas is the author of the impugned publications. No such finding is sought and none shall be granted in this decision. Second, Atas purported to raise this issue during the main action and was told that, if she wished the proceedings stayed pending completion of her prosecutions for contempt of court, she would have to bring a motion seeking that relief. Atas knows that is what is required to obtain a stay – a motion, on proper materials, raising the issue. In that context, the court could consider devising protections for Atas while also protecting the legitimate interests of the moving parties. Atas did not bring such a motion and has not identified any basis on which her right to remain silent is prejudiced in light of the term imposed by this court that the issue of her authorship of the impugned materials not be decided in this motion.

4. The Purpose of the Orders Is to Imply that Atas is the Author of the Posts

[14] With respect, this argument lacks coherence. The issue of authorship is expressly not before this court, Atas has no need to respond to that issue, and so there can be no basis for anyone to say that the issue has been decided – either expressly or by implication.

[15] Could a reasonable person infer, from all the circumstances, that Atas is the author of the postings that are the subject-matter of the instant order? Of course. As a matter of common sense, such an inference could be drawn. That arises from the facts and circumstances, not from this court's decision on this motion.

5. Court Lacks Jurisdiction in Respect to Non-Parties

[16] This argument is a restatement of Atas' position that the court may not grant remedies respecting harassment and defamation of people who are not parties. This court decided that issue against Atas in the Judgment. Atas' arguments to the contrary on this motion are a collateral attack on the Judgment and are improper.

6. Ulterior Purpose Is to Obtain Evidence Against Atas for the Criminal Proceedings

[17] I see no basis for this argument. The impugned publications are on the internet. For reasons explained in detail in the Judgment, the plaintiffs need orders from the court in order to have the publications removed from the internet. Justice demands that they be put in a position to have these posts removed. Whether information that comes to the attention of the moving parties or prosecutors as a result of this decision should be available against Atas in the criminal proceedings is a matter for a different court to decide on another day.

7. Counsel Has A Conflict of Interest

[18] Mr Caplan is a complainant in criminal proceedings against Atas. Atas argues that this puts Mr Caplan in a conflict of interest in pursuing the motion now before this court. For reasons given in the judgment and on prior occasions when Atas has challenged Mr Caplan's role, Atas

cannot get a lawyer removed from the record for an opponent through the expedient of attacking the lawyer tortiously, criminally, or by way of a professional discipline complaint to his regulator. To hold otherwise would reward the vexatious conduct that has been Atas' hallmark throughout her litigation career.

8. Parties and Protected Parties Are Complainants in the Criminal Proceedings and thus have Conflicts of Interest

[19] This argument presupposes that someone who has been wronged profoundly may not seek civil and criminal justice at the same time. There is no conflict in doing both. The argument is without basis.

The "Kangaroo Court" Argument

[20] It is part of Atas' *modus operandi* to heap abuse upon those with whom she disagrees. Her personal comments about this court as a "kangaroo court" (which she goes on to define and explain) – are naked abuse and not legal argument – and constitute contempt of court. Atas goes on to tar the Court of Appeal with the same brush ("only the court of appeal of Ontario would collude and uphold this judgment").

[21] Atas has been cited for contempt several times by this court and has served a significant jail sentence for this reason. I go no further, in this instance, than to make the finding of contempt. If there is a repetition of this conduct before me – whether orally or in writing – Atas may expect to be cited for contempt again and required to show cause why she should not be committed to jail again.

Conclusion

[22] The moving parties have established a case for the requested order on a balance of probabilities. Atas has not contested the merits of the motion but instead has raised technical and procedural objections. Most of these objections are collateral attacks on the Judgment and prior endorsements. None of them provide a basis to oppose the requested order, which does no more than provide the moving parties with enforcement of the Judgment in respect to publications made or coming to their attention after the date on which the motions for judgment were argued back in 2019.

[23] Order to go in accordance with these reasons. The draft order provided by the moving parties does not reflect this decision – it is styled as a "Supplementary Judgment" (which this is not – it is an order following a motion to enforce terms of a Judgment and should simply be styled as an "Order") and it makes findings of authorship which I have not made. Counsel may provide a draft order by email, in WORD format. A copy should be provided to Ms Atas by sending a copy by email to her criminal defence lawyer and mailing a copy to her at her address for service. Approval as to form and content is dispensed with.

_____

D.L. Corbett J.

Released: August 5, 2021

CITATION: Caplan v. Atas, 2021 ONSC 5390
COURT FILE NOS.: CV-10-400035, CV-16-544153, CV-18-594948, CV-18-608448
DATE: 20210805

ONTARIO

SUPERIOR COURT OF JUSTICE

D.L. Corbett J.

BETWEEN:

Dr Joseph Caplan et al.

Plaintiffs

- and –

Nadire Atas

Defendant

ENDORSEMENT

D.L. Corbett J.

Released: August 5, 2021

Ontario
SUPERIOR COURT OF JUSTICE

Court File No. CV-10-400035

BETWEEN:

STANCER GOSSIN ROSE LLP

Plaintiff

-and-

NADIRE ATAS and JANE DOE

Defendants

Court File No. CV-16-544153

BETWEEN:

DALE & LESSMANN LLP, ROBERT E. DALE, DAVID E. MENDE, CHRISTINA J. WALLIS, KAGAN SHASTRI LLP, RAHUL SHASTRI, DAVID WINER, STANCER GOSSIN ROSE LLP, RAYMOND STANCER, ERIC GOSSIN, MITCHELL ROSE, GARTH DINGWALL and RALPH STEINBERG, J. DAVID SLOAN, PEOPLES TRUST COMPANY, DEREK PEDDLESDEN, FRANK RENOU, MARTIIN MALLICH and SHARON HALL

Plaintiffs

-and-

NADIRE ATAS

Defendant

Court File No. CV-18-594948

BETWEEN:

DR. JOSEPH CAPLAN, DEREK LUTH, YAHEL NOV, JONATHAN MICHAEL STANCER, CHARLES ADAM STANCER, RAYMOND STANCER, TOM PIRES and NELLA PIRES

Plaintiffs

and

NADIRE ATAS

Defendant

Court File No. CV-18-608448

BETWEEN:

GUY BABCOCK, LUC GROLEAU, JULIA BABCOCK, MARC GROLEAU, SHU GUANG SHEN, REBECCA HAUFE, ANDREW HAUFE , KATHERINE BRNJAC, TOM BABCOCK, RAMONA HELM. JOHN BABCOCK, MILA BAIER , SHAWN MURRAY AND AGNIESZKA MURRAY, PRESTON SCHMIDT, BRANDON SCHMIDT, RALPH SCHMIDT, SARA BASARAM JOHN BAIER, TONY LOCANE, ALEXANDRA BORONDY, ALFONSO COSENTINO AND STEVE PROC

Plaintiffs

-and-

NADIRE ATAS

Defendant

MOTION RECORD

March 23, 2021

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Lawyers for the Plaintiffs

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Ontario
SUPERIOR COURT OF JUSTICE

Court File No. CV-10-400035

BETWEEN:

STANCER GOSSIN ROSE LLP

Plaintiff

-and-

NADIRE ATAS and JANE DOE

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NADIRE ATAS

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Court File No. CV-18-594948

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and

NADIRE ATAS

Defendant

Court File No. CV-18-608448

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Plaintiffs

-and-

NADIRE ATAS

Defendant

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TAB 1

Court File No. CV-10-400035
Court File No. CV-16-544153
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Ontario
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF A MOTION FOR AN AMENDED AND SUPPLEMENTARY JUDGMENT AND ANCILLARY ORDERS

Court File No. CV-10-400035

B E T W E E N:

STANCER GOSSIN ROSE LLP

Plaintiff

-and-

NADIRE ATAS and JANE DOE

Defendants

Court File No. CV-16-544153

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DALE & LESSMANN LLP, ROBERT E. DALE, DAVID E. MENDE, CHRISTINA J. WALLIS, KAGAN SHASTRI LLP, RAHUL SHASTRI, DAVID WINER, STANCER GOSSIN ROSE LLP, RAYMOND STANCER, ERIC GOSSIN, MITCHELL ROSE, GARTH DINGWALL and RALPH STEINBERG, J. DAVID SLOAN, PEOPLES TRUST COMPANY, DEREK PEDDLESDEN, FRANK RENOU, MARTIN MALLICH and SHARON SMALL

Plaintiffs

-and-

NADIRE ATAS

Defendant

Court File No. CV-18-594948

BETWEEN:

DR. JOSEPH CAPLAN, DEREK LUTH, YAHEL NOV, JONATHAN MICHAEL STANCER, CHARLES ADAM STANCER, RAYMOND STANCER, TOM PIRES and NELLA PIRES

Plaintiffs

and

NADIRE ATAS

Defendant

Court File No. CV-18-608448

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Plaintiffs

-and-

NADIRE ATAS

Defendant

NOTICE OF MOTION FOR AN AMENDED AND SUPPLEMENTARY JUDGMENT AND ANCILLARY ORDERS

The Plaintiffs in the above styled actions will make a Motion before the Honourable Mr. Justice D.L. Corbett on a date and time to be arranged or as soon after that time as the Motion can be heard at the Courthouse, 361 University Avenue in Toronto, Ontario.

PROPOSED METHOD OF HEARING: The Motion is to be heard:

[ ] in writing under subrule 37.12.1(1);

[ ] in writing as an opposed motion under subrule 37.12.1(4);

[X] orally by Zoom or such other means as the Court may direct.

THE MOTION IS FOR:

a) An Order that the plaintiffs be at liberty to file before this Court such further fresh, and supplementary evidence relating to "Offending Posts" referred to in the Judgment;

b) The issue of an Amended and Supplementary Judgment granting the relief set out in the Judgment of this Court dated January 28, 2021 in relation to and with respect to (a) Offending Posts said to be created, authored , and disseminated directly or indirectly by the defendant Nadire Atas online between November 15, 2019 and January 28, 2021, and (b) in relation to "Offending Posts" made prior to November 15, 2019;

c) Such further and other relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

1. This Court published its Reasons for Decision in connection with the four above styled actions on January 28, 2021 and it is expected that it will issue its Judgment;

2. The Judgment expected to be issued deals and is concerned with "Offending Posts" found to be created, authored and disseminated directly or indirectly by the defendant Nadire Atas on line up to November 15, 2019 and which were the subject of the Motions;

3. The Plaintiffs in the above styled action now move to place before this Court evidence relating to "Offending Posts" created, authored and disseminated directly or indirectly by the defendant Nadire Atas and on line for the period November 15, 2019 to January 28, 2021 and posts online prior to November 15, 2019 which were not known by the plaintiffs as of the date of the Motions;

4. The Plaintiffs now move that this Court issue and publish a Supplementary Judgment and Ancillary Orders in respect thereof in the form annexed to the affidavit of Luc Groleau;

5. Such further and other relief as to this Court may seem just

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

a. The Reasons and the draft Judgment of this Court in the above styled Actions dated January 28, 2021;

b. The Affidavit of Luc Groleau;

c. Such further and other documentary evidence as the lawyers may advise and this Honourable Court may permit.

Court File No. CV-18-594948

DR. JOSEPH CAPLAN et al.
Plaintiffs

-and-

ATAS
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Plaintiffs

File Number: 14-0117

TAB 2

Court File No. CV-10-400035
Court File No. CV-16-544153
Court File No. CV-18-594948
Court File No. CV-18-608448

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF A MOTION FOR AN AMENDED AND SUPPLEMENTARY JUDGMENT AND ANCILLARY ORDERS

Court File No. CV-10-400035

B E T W E E N:

STANCER GOSSIN ROSE LLP

Plaintiff

-and-

NADIRE ATAS and JANE DOE

Defendants

Court File No. CV-16-544153

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DALE & LESSMANN LLP, ROBERT E. DALE, DAVID E. MENDE, CHRISTINA J. WALLIS, KAGAN SHASTRI LLP, RAHUL SHASTRI, DAVID WINER, STANCER GOSSIN ROSE LLP, RAYMOND STANCER, ERIC GOSSIN, MITCHELL ROSE, GARTH DINGWALL and RALPH STEINBERG, J. DAVID SLOAN, PEOPLES TRUST COMPANY, DEREK PEDDLESDEN, FRANK RENOU, MARTIN MALLICH and SHARON SMALL

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-and-

NADIRE ATAS

Defendant

Court File No. CV-18-594948

B E T W E E N:

DR. JOSEPH CAPLAN, DEREK LUTH, YAHEL NOV, JONATHAN MICHAEL STANCER, CHARLES ADAM STANCER, RAYMOND STANCER, TOM PIRES and NELLA PIRES

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and

NADIRE ATAS

Defendant

Court File No. CV-18-608448

B E T W E E N:

GUY BABCOCK, LUC GROLEAU, JULIA BABCOCK, MARC GROLEAU, SHU GUANG SHEN, REBECCA HAUFE, ANDREW HAUFE , KATHERINE BRNJAC, TOM BABCOCK, RAMONA HELM. JOHN BABCOCK, MILA BAIER , SHAWN MURRAY AND AGNIESZKA MURRAY, PRESTON SCHMIDT, BRANDON SCHMIDT, RALPH SCHMIDT, SARA BASARA, JOHN BAIER, TONY LOCANE, ALEXANDRA BORONDY, ALFONSO COSENTINO AND STEVE PROC

Plaintiffs

-and-

NADIRE ATAS

Defendant

AFFIDAVIT OF LUC GROLEAU SWORN IN SUPPORT OF A MOTION FOR THE ISSUE OF AN AMENDED AND SUPPLEMENTARY JUDGMENT AND ANCILLARY ORDERS

I, Luc Groleau, of the City of Brossard, in the Province of Quebec, MAKE OATH AND SAY:

1. I am one of the plaintiffs in the captioned "Babcock Action" and as such have knowledge of the matters hereinafter deposed to.

2. I have filed affidavits in the course of the four consolidated motions for summary and default judgments with respect to Ms. Atas in the above styled Actions. I repeat, adopt and incorporate the contents of those affidavits for the purposes of this affidavit. These motions were heard over a number of days commencing on November 15, 2019.

2019 Data Set: The First Methodology

3. In the November 2019 Motion materials, the plaintiffs had submitted the list of then known online posts to the court. I was responsible for the making of the list. To produce this list, I wrote a program which performed Google searches and documented the results in text files (the First Methodology). I then manually analyzed the data. This was a very time consuming effort which required about 1 month to complete. This meant that a current or up to the minute list could not be accomplished. At best, by the time of the hearing of the Motions, the inventory was postings was a month old. In addition, because I relied on Google's search engine to provide results, the data was always dependent on what Google presented to me. This does not take away from what was presented to the court in November 2019. It only means that it was incomplete and was missing additional then unknown posts. For the purposes of this affidavit, I will call that methodology as the First Methodology.

4. I have reviewed the Judgment dated January 28, 2021 which will be submitted to the Court for issue. Schedule B to that Judgment contains the posts which were listed in the Motion Materials and are the product of the First Methodology.

Methodology of the new Monitoring Program (Summer 2020 Version): The Second Methodology

5. In the summer of 2020, I developed a "Second Methodology" to identify the posts that referred to the Plaintiffs/ Parties and "Protected Persons", I wrote a program which monitored activity on websites known to have been used by Ms. Atas for her campaign of defamation and harassment. As new websites were identified, the program was (and is) updated daily to monitor these sites.

6. This monitoring program produced a report detailing new posts found. This report was and is manually reviewed by me to further verify its accuracy.

7. The Summer 2020 version of the monitoring program examined the content of 104 separate websites every day. At a high level, the program does the following tasks:

- Opens a file that contains the list of all plaintiffs.
- For each name, the program uses a web browser and opens a specifically crafted URL (web address) to conduct a search using the website's own search capability. This URL contains the specific syntax required by the website along with the plaintiff's name.
- The program analyses the results of the website search.

- The program opens the elements returned by the search and parses 3 components:
    - Date the post was created or published
    - The title of the post
    - The URL associated with the post.
- The post's creation date is then used to determine if this is a new post or an existing one.
- After the 3 components of the post have been parsed, the program performs a validation to verify that the post is about the specific victim that it is searching.
- At this point, about 95+% of all results are positive hits, meaning that 95+% of results are truly harassment and/or defamatory posts against the plaintiff.
- Optionally, if requested by any of the Parties or Protected Persons, the monitoring program sends an email to that person outlining the new posts found.
- The program then saves the 3 components (creation date, title of the posts and the URL) along with the plaintiff's name in a text file.
- I manually review the content of each day's search results to further validate that each post isn't about another unrelated person who happens to have the same name as the plaintiff. Such posts are removed from the master list.

- The monitoring program then sends me an email a summary email once every name and every site has been processed. Along with the run's summary, the program also provides statistical historical information such as the number of posts per day and month, number of posts for each individual, each group and each website.

- While it is important to understand what the program does, it is equally important to understand what it is not. The monitoring program does not make use of any artificial intelligence mechanism nor does it try to identify new victims. It does not know about Nadire Atas nor can it tell the difference between a complimentary post and an offending one. This determination is made by me as I manually review the results of each day's activity. The program only documents what it finds without making any judgment on its content. The program only knows 3 things:

- List of existing victims (the program does NOT add new names to this list)

- List of websites to monitor

- List of all previously found posts

    - This is used to produce statistical information and to avoid creating duplicate entries. The program does not use this information in any manner to identify new posts.

8. Most websites used by Ms. Atas contain a timestamp for when specific posts were created. This timestamp is based on the web server's time zone settings. For this

reason, it is possible that some dates in the report do not reflect the actual date when the post was created in the EST time zone. As an example, if a post was created on February 1, 2021 at 11:00 PM EST, the website may report it to have been created on February 2, 2021 at 4:00 AM GMT. In this case, the post would be identified in the report as having been created on February 2, 2021.

9. Some websites do not make timestamps available. My program is still able to determine the approximate date that a post was created based on the known inventory of posts. When a website is added to my program, I performed and perform a full scan for every known target of Ms. Atas. Any new posts found in subsequent days must then have been created between the last time the website was scanned and the current date.

10. When a new website is added to the program and there is no timestamp information available, a full scan of the website is performed. All posts found during this initial scan are assumed to have been created prior to January 28, 2021. I know that this may not necessarily be the case, however, I prefer to do a conservative assessment of the data since I can't verify the exact date by other means.

11. As a result of my use of the Second Methodology, I was able to find beginning in 2020 and 2021:

a) Websites and postings on line before November 2019 that were unknown to me and the plaintiffs at the time of the hearing of the Motions;

b) Websites and postings on line between and discovered for the period November 2019 to January 28, 2021.

12. For the reasons set out in my earlier affidavits, and this, I am of the opinion and do verily believe, that the Offending Posts created and which appear posted online up to January 28, 2021 (that includes previously unknown pre November 2019 posts) are now set out in Schedule B to the proposed Amended and Supplementary Judgment, which Judgment is now attached hereto as Exhibit A. To repeat, this Amended and Supplementary Judgment now captures in its Schedule B: the postings that were before the court on the November 2019 motions; postings on line prior to November 2019 that were not known to the plaintiffs at the time of the Motions but discovered in 2020; and posting found on line for the period November 2019 to January 28, 2021.

13. I make this affidavit supplementary to my earlier affidavits and to provide this court with the necessary evidence that relates to postings that were made up to January 28, 2021.

SWORN BEFORE ME, on the 5th day of March, 2021. **This oath was administered in accordance with Ontario Reg. 431/20 and administered by videoconferencing** at the City of Brossard, in the Province of Quebec.

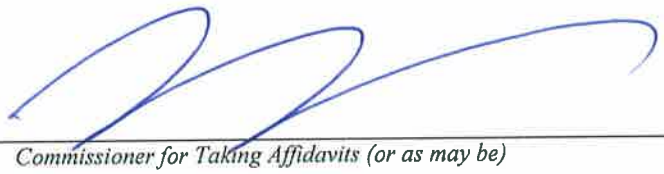
A Commissioner, etc.

GARY M. CAPLAN LSO 19805G

LUC GROLEAU

TAB A

This is Exhibit "A" referred to in the Affidavit of Luc Groleau sworn ..... March, 2021



Commissioner for Taking Affidavits (or as may be)

Court File CV-10-400035
Court File CV-16-544153
Court File CV- 18-594948
Court File CV- 18-608448

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF A MOTION FOR A SUPPLEMENTARY JUDGMENT AND ANCILLARY ORDERS

THE HONOURABLE)
)
MR. JUSTICE D.L.CORBETT)

DAY, THE

DAY OF MARCH 2021

Court File No. CV-10-400035

BETWEEN:

STANCER GOSSIN ROSE LLP

Plaintiff

-and-

NADIRE ATAS and JANE DOE

Defendants

Court File No. CV-16-544153

BETWEEN:

DALE & LESSMANN LLP, ROBERT E. DALE, DAVID E. MENDE, CHRISTINA J. WALLIS, KAGAN SHASTRI LLP, RAHUL SHASTRI, DAVID WINER, STANCER GOSSIN ROSE LLP, RAYMOND STANCER, ERIC GOSSIN, MITCHELL ROSE, GARTH DINGWALL and RALPH STEINBERG, J. DAVID SLOAN, PEOPLES TRUST COMPANY, DEREK

PEDDLESDEN, FRANK RENOU, MARTIN MALLICH and SHARON SMALL

Plaintiffs

-and-

NADIRE ATAS

Defendant

Court File No. CV-18-594948

BETWEEN:

DR. JOSEPH CAPLAN, DEREK LUTH, YAHEL NOV, JONATHAN MICHAEL STANCER, CHARLES ADAM STANCER, RAYMOND STANCER, TOM PIRES and NELLA PIRES

Plaintiffs

and

NADIRE ATAS

Defendant

Court File No. CV-18-608448

BETWEEN:

GUY BABCOCK, LUC GROLEAU, JULIA BABCOCK, MARC GROLEAU, SHU GUANG SHEN, REBECCA HAUFE, ANDREW HAUFE , KATHERINE BRNJAC, TOM BABCOCK, RAMONA HELM. JOHN BABCOCK, MILA BAIER , SHAWN MURRAY AND AGNIESZKA MURRAY, PRESTON SCHMIDT, BRANDON SCHMIDT, RALPH SCHMIDT, SARA BASARA, JOHN BAIER, TONY LOCANE, ALEXANDRA BORONDY, ALFONSO COSENTINO AND STEVE PROC

Plaintiffs

-and-

NADIRE ATAS

Defendant

SUPPLEMENTARY JUDGMENT AND ANCILLARY ORDERS TO THE JUDGMENT DATED JANUARY 28, 2021

THIS MOTION brought by the plaintiffs for a Supplementary Judgment and Ancillary Orders to that issued by this Court on January 28, 2021, in the above Court File Numbers being Court Files CV-10-400035, CV-16-544153 and CV-18-594948 and File CV-18-608448 was heard this day at the Courthouse, 361 University Avenue, Toronto, Ontario, M5G 1E6.

ON READING the pleadings and proceedings filed in these Actions including Case Management Orders and upon reading the affidavit filed by Luc Groleau and the Reasons (Judgment) of this Court released January 28, 2021, and the Judgment and Ancillary Orders of this Court dated January 28, 2021, and on hearing the submissions of the lawyer for the plaintiffs and on hearing the submissions of the defendant, self represented, and in part by her criminal law lawyer,

A. Definitions and Meaning

1. **THIS COURT ORDERS** that the following definitions and meanings shall apply to this Judgment:

   a) "Party" or "Parties" shall mean the person or persons named as Plaintiffs in respect of the titled Actions set out above;

   b) "Protected Persons" shall mean those persons listed in Schedule A to this Judgment together with any past, present, and future friends, families, trusts, business and personal associates of the Party or Parties living or deceased. Without limiting the

generality of the foregoing, Protected Persons shall include where applicable, any past, present or future professional corporations, partnerships, employees, employers, and business and personal associates of the Parties and any of their respective past, present and future friends, families, trusts, business and personal associates;

c) "Offending Posts" shall mean any past, present, or future electronic or digital statements, postings, platform or website content, blogs, tweets, chats, webpages, indexes, listings, comments, opinions, photographs, and depictions of or with reference to the Parties or the Protected Parties and which for the purposes of this Judgment are set out in Schedule B to this Judgment and which were present on line between November 15, 2019 and January 28, 2021;

d) "Credentials" shall mean any and all of the following contained in the hard drive of any computer, phone or other device that relate to the Parties and Protected Persons whether set out in Schedule A and the Offending Posts in Schedules B or otherwise: usernames; site logins; passwords; identification numbers and identifiers; codes; pseudonyms; aliases; nicknames; account-related telephone numbers; account information; email addresses; means of verification; means of authentication; signatures (electronic or otherwise); keys; which have, are or may be used to create digital and electronic content or open and maintain accounts of any nature or kind;

e) "Content" shall mean any and all of the following contained in the hard drive of any computer, phone or other device that relate to the Parties and Protected Persons whether set out in Schedule A and the Offending Posts set out Schedules B or otherwise: internet browsing history; SAAS account; all image files (such GIF, JPEG, JPG, BMP,

TIFF);Word files; SMS messages; Text files; cached HTML files; web pages; emails and attachments; email accounts including inbox, sent, deleted items; address book; WhatsApp messaging and associated images; gravatars; all deleted file content and any other hard drive content,

f) "Harassment" or "harassing" shall include any act or omission, conduct, communication, or deed, of any kind or nature whatsoever, be it electronic, or digital or otherwise directed against, or in relation to, or in connections with the Parties and Protected Persons, or any of them, if such vexes, molests, or interferes with the Parties or the Protected Persons or causes, results in , or gives rise to fear, anxiety, emotional, or psychological upset or that impugns the dignity of the person and shall include, without limiting the generality of the foregoing, any act or omission, conduct or communication or deed that is, or would reasonably be expected to be threatening, bullying, stalking, harassing, vexing or molesting of the person, and "Harass" and "Harassing" each have the correlative meaning;

g) Schedule B means Offending Posts were created, authored and disseminated by the defendant Nadire Atas and which include posts that appeared on line prior to November 15, 2019 and not included in the Judgment dated January 28, 2021 and post which appeared on line from November 15, 2019 to January 28, 2021

B. Declaration Regarding the Authorship and Maker of the Posts

2. **THIS COURT DECLARES AND ADJUDGES** that the defendant Nadire Atas is the maker, author, creator, disseminator, publisher and re-publisher directly or indirectly of the

Offending Posts set out in Schedule B as against the Parties and the Protected Persons set out in Schedule A to this Judgment.

C. Declaration as to Defamatory and False Nature of the Offending Posts

3. **THIS COURT DECLARES AND ADJUDGES** that the Offending Posts set out in Schedule B are malicious, salacious, outrageous, malevolent and/or false and defamatory of the Parties and the Protected Persons.

D. Declaration as to Harassment in Internet Communications and Harassment

4. **THIS COURT DECLARES AND ADJUDGES** that all of the Offending Posts set out in Schedule B hereto constitute Harassment of the Parties and the Protected Persons;

5. **THIS COURT DECLARES AND ADJUDGES** that Nadire Atas made the Offending Posts knowing the Offending Posts to be malicious, salacious, outrageous, malevolent and or false and defamatory and made them for the purposes of Harassment.

E. Permanent Restraining Order for the Online Conduct of the Defendant:

6. **THIS COURT ORDERS** that the defendant, Nadire Atas, either directly or indirectly, including through her agents, servants, or otherwise, whether by or in her own name, or by pseudonym, nickname, alias, anonymously, or in the name of another person, and whether identified by address, photograph, or other means of identity that she has used or may use in the future, is hereby permanently restrained, enjoined and prevented from:

a) making, creating, posting, publishing or republishing by hyperlink or otherwise on any website, electronic medium or platform, any statements,

postings, blogs, tweets, chats, webpages, comments, opinions, photographs, depictions or content of any kind or nature that refers to, comments on, are about, or are concerning in any way the Parties or Protected Persons or any of them;

b) assuming the identity of the Parties or Protected Persons or any of them for any purpose;

c) impersonating the Parties or Protected Persons or any of them as the author of content or a message on the internet;

d) taking, appropriating, or using any content, photograph, or depiction that belongs to the Parties or Protected Persons or any of them;

e) disclosing, communicating, discussing or referring to any facts relating to the Parties or Protected Persons or any of them;

f) engaging in any form of communication that is offensive, indecent, or obscene of the Parties or Protected Persons or any of them;

g) making of any allegations of fact, reputation or character of the Parties or Protected Persons or any of them;

h) engaging in communications that defames, denigrates or humiliates the Parties or Protected Persons or any of them;

i) manipulating, plagiarizing, editing, altering, or changing online reports, news stories, comments, editorials or content to refer to the Parties or Protected Persons or any of them.

j) communication with any of the Parties or Protected Persons or any of them in any way or form save and except for communications in respect of any ongoing court proceedings.

F. Permanent Restraining Order for Acts of Harassment

7. **THIS COURT ORDERS** that the defendant Nadire Atas is hereby permanently restrained, enjoined and prevented from engaging in any form of act, deed, conduct or communication, electronic, digital or otherwise which has the effect of Harassing of any of the Parties or the Protected Persons or any of them. For the purposes of this Judgment, and without limiting the generality of the foregoing, any of the following acts, deeds, conduct, or communications shall be deemed to constitute Harassment:

a) disclosure of sensitive personal facts or breach of confidence relating to a Party or a Protected Person;

b) any act or conduct which is threatening, intimidating or menacing of a Party or a Protected Person;

c) any form of communication that is offensive, indecent, or obscene of a Party or a Protected Person;

d) any form of electronic or non electronic form of communication that makes false allegations or statements of any Party or Protected Person;

e) communications that incite or encourage another person to Harass or vex a Party or Protected Person;

f) communications that denigrates or humiliates a Party or Protected Person;

g) attending or entering any premises or property where a Party or Protected Person works, lives, or conducts their affairs;

h) manipulating, plagiarizing, editing, altering, or changing online reports, news stories, comments, editorials or content so as to refer to any Party or Protected Person;

i) using any image, picture, logo, or video, or any other likeness or depiction, of the Parties or the Protected Person;

j) accessing social media sites (Facebook, LinkedIn, Twitter, Instagram, etc.) or the corporate site of any of the Parties or the Protected Person as herself, or by any alias or anonymous user;

k) posting or reposting reviews on any website about any of the Parties or Protected Person using her own name, alias, or anonymous account;

l) any conduct designed to annoy, molest or harass the Parties or the Protected Persons.

G. Order As To Removal of Offending Posts by the Parties and the Protected Persons and Delivery of Credentials and Content

8. **THIS COURT ORDERS** that the Parties and the Protected Parties individually or collectively are at liberty and at their sole discretion including by and through counsel to do and take all actions to remove or cause to be removed the Offending Posts as listed in

Offending Posts set out in Schedule B as against the Parties and the Protected Persons set out in Schedule A to this Judgment.

C. Declaration as to Defamatory and False Nature of the Offending Posts

3. **THIS COURT DECLARES AND ADJUDGES** that the Offending Posts set out in Schedule B are malicious, salacious, outrageous, malevolent and/or false and defamatory of the Parties and the Protected Persons.

D. Declaration as to Harassment in Internet Communications and Harassment

4. **THIS COURT DECLARES AND ADJUDGES** that all of the Offending Posts set out in Schedule B hereto constitute Harassment of the Parties and the Protected Persons;

5. **THIS COURT DECLARES AND ADJUDGES** that Nadire Atas made the Offending Posts knowing the Offending Posts to be malicious, salacious, outrageous, malevolent and or false and defamatory and made them for the purposes of Harassment.

E. Permanent Restraining Order for the Online Conduct of the Defendant:

6. **THIS COURT ORDERS** that the defendant, Nadire Atas, either directly or indirectly, including through her agents, servants, or otherwise, whether by or in her own name, or by pseudonym, nickname, alias, anonymously, or in the name of another person, and whether identified by address, photograph, or other means of identity that she has used or may use in the future, is hereby permanently restrained, enjoined and prevented from:

a) making, creating, posting, publishing or republishing by hyperlink or otherwise on any website, electronic medium or platform, any statements,

postings, blogs, tweets, chats, webpages, comments, opinions, photographs, depictions or content of any kind or nature that refers to, comments on, are about, or are concerning in any way the Parties or Protected Persons or any of them;

b) assuming the identity of the Parties or Protected Persons or any of them for any purpose;

c) impersonating the Parties or Protected Persons or any of them as the author of content or a message on the internet;

d) taking, appropriating, or using any content, photograph, or depiction that belongs to the Parties or Protected Persons or any of them;

e) disclosing, communicating, discussing or referring to any facts relating to the Parties or Protected Persons or any of them;

f) engaging in any form of communication that is offensive, indecent, or obscene of the Parties or Protected Persons or any of them;

g) making of any allegations of fact, reputation or character of the Parties or Protected Persons or any of them;

h) engaging in communications that defames, denigrates or humiliates the Parties or Protected Persons or any of them;

i) manipulating, plagiarizing, editing, altering, or changing online reports, news stories, comments, editorials or content to refer to the Parties or Protected Persons or any of them.

16. **THIS COURT ORDERS** that the Parties and the Protected Persons are at liberty to apply to Justice D.L Corbett of this Court for further and other ancillary relief, in the event of want of compliance with this Judgment or in respect of any Offending Posts made or authored by or on behalf of the defendant Nadire Atas after November 15, 2019.

J. Duty to Deliver and Submit

17. **THIS COURT ORDERS** that in the event the defendant, Nadire Atas, either directly or indirectly, institutes court or administrative proceedings of any kind (including without limitation, complaints to any professional or regulatory body or claims to a human rights commission or tribunal) she shall simultaneously provide a copy of the Reasons for Judgment and this Judgment to the court, body, commission, or tribunal to which the claim or complaint is made.

18. **THIS COURT ORDERS** that the defendant, Nadire Atas, shall not seek to commence any criminal proceedings or make complaint to any peace officer without simultaneously (or, in exigent circumstances, as soon as is reasonably practicable) providing the judicial officer (whether a justice of the peace or other judicial officer) or the peace officer (as the case may be) with a copy of the Reasons for Judgment and this Judgment.

19. **THIS COURT ORDERS** if the defendant enters or attends any public library, internet café, or like facility, or intends to access or use Wi-Fi, local area network, or other internet accessing portal of any kind, or uses in any way any electronic device owned, or used by any person or facility, be it public or private, she shall deliver a copy of this Judgment to the person or as the case may be to the person who appears to be in charge of managing the

public library, internet café or like facility, or in control of the internet portal, at the time of her entry and before she uses a computer or like device located therein or prior to her access.

K. Right to Appeal

20. **THIS COURT ORDERS** that any request by the defendant for permission to bring an Application under 140(3) appeal from this Judgment shall be decided by a Judge designated by the Senior Regional Judge. If the defendant seeks such permission, she shall do so by directing her request to the Senior Regional Judge with a request that he assign a Justice to decide the question.

_____

(Signature of Judge)

Schedule "A"

Person	Association to Nadire Atas
Andrew Haufe	Babcock Family
Guy Babcock	Babcock Family
John Babcock	Babcock Family
Julia Groleau	Babcock Family
Katherine Brnjac	Babcock Family
Luc Groleau	Babcock Family
Marc Groleau	Babcock Family
Ramona Helm	Babcock Family
Rebecca Haufe	Babcock Family
Shu Guang Shen	Babcock Family
Tom Babcock	Babcock Family
Lillian Babcock	Babcock Family
Derek Luth	Caplan Family Member
Erin Caplan	Caplan Family Member
Gary Caplan	Caplan Family Member
Joseph Caplan	Caplan Family Member
Josh Caplan	Caplan Family Member
Yahel Nov	Caplan Family Member
Alyssa Tipple	Dale & Lessmann LLP
Andrew Mingay	Dale & Lessmann LLP
Anne-Marie Widner	Dale & Lessmann LLP
Chad Finkelstein	Dale & Lessmann LLP
Jennifer Harden	Dale & Lessman LLP
Clark Harrop	Dale & Lessmann LLP
David Mende	Dale & Lessmann LLP
David Shaw	Dale & Lessmann LLP
Dean Psarras	Dale & Lessmann LLP
Geoff Janoscik	Dale & Lessmann LLP
George Wisniewski	Dale & Lessmann LLP
Jeffrey Hoffman	Dale & Lessmann LLP
Jenny Pho	Dale & Lessmann LLP
John Moher	Dale & Lessmann LLP
John Richardson	Dale & Lessmann LLP
Jordan Morelli	Dale & Lessmann LLP
Mark Uster	Dale & Lessmann LLP
Monika Drobnicki	Dale & Lessmann LLP
Robert Dale	Dale & Lessmann LLP
Jennifer Harden	Dale & Lessmann LLP
David Winer	Dale & Lessman LLP
Ira Kagan	Kagan Shastri LLP
Paul DeMelo	Kagan Shastri LLP
Rahul Shastri	Kagan Shastri LLP
Bruce Desmond	Kagan Shastri LLP
Alexander Lee	Kagan Shastri LLP
Aram Simovonian	Mason Caplan Roti LLP
Alvina Baig	Mason Caplan Roti LLP
Annessa Cenerini	Mason Caplan Roti LLP
Brad Williams	Mason Caplan Roti LLP
Catalin Asody	Mason Caplan Roti LLP
Cathi Asody	Mason Caplan Roti LLP
	Mason Caplan Roti LLP

Schedule "A"

Ciaran McGrath	Mason Caplan Roti LLP
Claudia Cortell	Mason Caplan Roti LLP
Sheldon Erentzen	Mason Caplan Roti LLP
Clayton Allen	Mason Caplan Roti LLP
Danielle Borst	Mason Caplan Roti LLP
Danielle Sugar	Mason Caplan Roti LLP
Elisabeth Worth	Mason Caplan Roti LLP
Elizabete Virdo	Mason Caplan Roti LLP
Bruno Roti	Mason Caplan Roti LLP
Emma Najgoldberg	Mason Caplan Roti LLP
Gary Caplan	Mason Caplan Roti LLP
Georgina Dawson	Mason Caplan Roti LLP
Gurleen Gill	Mason Caplan Roti LLP
Hanna Yarotskaya	Mason Caplan Roti LLP
Hannah Johnson	Mason Caplan Roti LLP
Jennifer Davies	Mason Caplan Roti LLP
Joseph LaMadrid	Mason Caplan Roti LLP
Justin Anisman	Mason Caplan Roti LLP
Kathy Murphy	Mason Caplan Roti LLP
Katrina Johnston	Mason Caplan Roti LLP
Laura Farrugia	Mason Caplan Roti LLP
Lorraine Sundardas	Mason Caplan Roti LLP
Lucy Rita	Mason Caplan Roti LLP
Marisa Quintal	Mason Caplan Roti LLP
Mark Mason	Mason Caplan Roti LLP
Melissa Mancini	Mason Caplan Roti LLP
Michael Ly	Mason Caplan Roti LLP
Nasim Tehrani	Mason Caplan Roti LLP
Paige Diebel	Mason Caplan Roti LLP
Payam Ezzatian	Mason Caplan Roti LLP
Raheem Adekunle	Mason Caplan Roti LLP
Rebecca Longpre	Mason Caplan Roti LLP
Ricky Yeung	Mason Caplan Roti LLP
Samantha Biglou	Mason Caplan Roti LLP
Samantha Jeroff	Mason Caplan Roti LLP
Sara Lewis	Mason Caplan Roti LLP
Sheldon Erentzen	Mason Caplan Roti LLP
Sonia Monteith	Mason Caplan Roti LLP
Sylvia Vymyslicky	Mason Caplan Roti LLP
Talia Feder	Mason Caplan Roti LLP
Teresa Qi	Mason Caplan Roti LLP
Thomas Su	Mason Caplan Roti LLP
Tracey Speers	Mason Caplan Roti LLP
Vagmi Patel	Mason Caplan Roti LLP
Nella Pires	Mortgage Broker
Tom Pires	Mortgage Broker
Darren Kozol	Peoples Trust Company
Derek Peddlesden	Peoples Trust Company
Martin Mallich	Peoples Trust Company
Sharon Small	Peoples Trust Company
Ralph Steinberg	Ralph Steinberg
Charles Adam Stancer	Ray Stancer Family Member

Schedule "A"

Jonathan Michael Stancer	Ray Stancer Family Member
Lisa Spiegel	Ray Stancer Family Member
Raymond Stancer	Ray Stancer Family Member
Agnieszka Murray	Real Estate Group
Brandon Schmidt	Real Estate Group
John Baier	Real Estate Group
Mila Baier	Real Estate Group
Preston Schmidt	Real Estate Group
Ralph Schmidt	Real Estate Group
Sara Basara	Real Estate Group
Shawn Murray	Real Estate Group
Tony Locane	Real Estate Group
Raymond Stancer	Stancer, Gossin, Rose LLP
Mitchell Rose	Stancer, Gossin, Rose LLP
Brad Bartja	Wallis Family Member
Carol Hansen	Wallis Family Member
Christina Wallis	Wallis Family Member
Christina J. Wallis	Wallis Family Member
Glen Wallis	Wallis Family Member
Jeff Bartja	Wallis Family Member
Kirk Sykora	Wallis Family Member
Lars Hansen	Wallis Family Member
Lilian Bartja	Wallis Family Member
Loren Lepoidevin Michael Borysenko Natalie Wallis	Wallis Family Member
Shawn Wallis	Wallis Family Member
Travis Alkins	Wallis Family Member
Willy Hansen	Wallis Family Member
Mitchell Rose	Wallis Family Member

Court File CV- 10-4000035
Court File CV-16-544153
Court File CV- 18-594948
Court File CV- 18-608448

DALE & LESSMANN et al.
Plaintiffs

-and-

NADIRE ATAS
Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

SUPPLEMENTARY JUDGMENT

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Lawyers for the Plaintiffs

File Number: 18-0065

Court File Nos. CV-10-400035
CV-16-544153
CV-18-594948
CV-18-608448

Yahel Nov et al
Plaintiffs

- and -

Nadire Atas
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDINGS COMMENCED AT TORONTO

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Lawyer for the Plaintiffs

File Number:18-0339